

PUBLIC HEARING

*New Jersey Legislature,*  
before  
JOINT LEGISLATIVE CONFLICTS OF INTEREST AND CODE OF ETHICS  
STUDY COMMISSION,  
(Created under Assembly Concurrent Resolution No. 44, 1969)

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185 W. State Street  
Trenton, N. J.

Held:  
March 20, 1969  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

Senator Joseph J. Maraziti (Chairman)  
Senator Richard J. Coffee  
Senator Michael A. Giuliano  
Senator John A. Lynch  
Assemblyman Thomas J. Costa  
Assemblyman Henry F. Gavan  
Assemblyman Thomas H. Kean  
Assemblyman Barry T. Parker  
Assemblyman Paul Policastro  
Assemblyman S. Howard Woodson

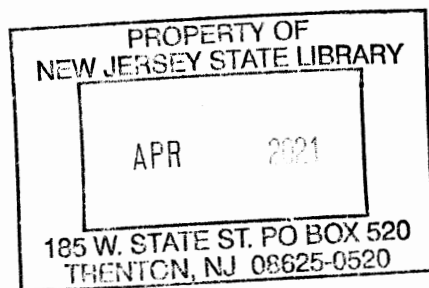
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SENATOR JOSEPH J. MARAZITI (Chairman): This hearing will come to order.

Let the record show that present are Senator Lynch, Senator Giuliano, Assemblyman Costa and Senator Maraziti, and Assemblyman Policastro.

This hearing is being held pursuant to Assembly Concurrent Resolution No. 44, creating a Conflict of Interest and Code of Ethics Study Commission.

I would like to call as the first witness, Mr. Elmer J. Bennett, Chairman of the Conflicts of Interest Committee of the New Jersey State Bar Association, unless you have a preference as to whether the other gentleman with you should testify first - we leave it to your discretion.

MR. BENNETT: I think we have agreed that I will go first.

SENATOR MARAZITI: Yes. We appreciate your appearing here this morning to assist us in our deliberations. Let me ask if you have a prepared statement.

E L M E R J. B E N N E T T: Senator Maraziti and members of the Joint Committee, I appreciate this opportunity to appear here on behalf of the State Bar Association and as Chairman of the Conflicts of Interest Committee.

I do not have a prepared statement which I propose to read into the record; I do, however, have with me, and I have distributed copies to the Clerk, a report which the Conflicts of Interest Committee submitted to the Trustees of the State Bar Association, a week or so ago, and which the Trustees have approved, and to which I will refer from time to

time, with your permission. (For Report - see p. 123)

SENATOR MARAZITI: Yes. Proceed at your convenience.

MR. BENNETT: Let me say, first of all, that conflicts of interest is not something that has been discovered last week or a month ago or ten years ago, it has been a problem that's been with us since biblical times and it's just another way of stating the ancient truth that no man can serve two masters at the same time.

In order that we may understand what we deem to be the problem insofar as it applies to Legislators and State Employees, I would like to suggest, and trust that you gentlemen will agree, that anyone who is elected to the Legislature has a position of trust and also an obligation to protect and defend the best interests of the people of the State and the State of New Jersey. This is what creates the problem, and we have to accept this as a premise.

Accepting that, it seems to me to follow that any time a member of the Legislature or a state employee or officer accepts a position which is contrary to the interests of the State, either as an attorney representing a claimant against the State or as an attorney representing someone against whom the State has a criminal or quasi-criminal proceeding pending, there is to some degree, unavoidably, a conflict of interest.

Stating that, however, and agreeing to that doesn't solve the problem because this is a practical world that we live in and there are conflicts all over the place and it is only conflicts of substance that we think the

Legislature should address itself to. For instance, if an attorney takes, say, a tidelands case against the State where it's his obligation to his private client to show that the land is and has been above the mean high tide line, he brings it in the Superior Court and there, unavoidably, there's a conflict of interest.

SENATOR MARAZITI: May I interrupt just a moment. In other words, you're talking now about an appearance in court and it's your position that there would be a conflict even in a judicial proceeding. Is that correct?

MR. BENNETT: I'm saying that technically there's a conflict. I hope you won't jump to the conclusion that I'm going to say that you should pass a law that this shouldn't happen. I merely want to define the field and outline the problem.

As I see it, there's a conflict there. In that case, however, although the lawyer, I think, should search his conscience before he takes a case against the State, we have a judge, the Superior Court Judge, who presumably is secure in his position and who will not be unduly influenced by the fact that a member of the Legislature is appearing before him. Therefore, I do not suggest, nor does the State Bar Association suggest that as a matter of law that man should not be permitted to practice in that kind of case before the court. I merely want to point out that there is, nevertheless, a conflict.

Now that's a case where there is a conflict without any serious danger of undue influence.

We have two problems, actually. It's fashionable to refer to the whole ball of wax as a conflict problem but there are two problems, one is the conflict problem and the other is the problem of undue influence which potentially exists whenever a member of the Legislature or a high state officer appears in a legal proceeding in which the state is involved.

An example of a case in which there is potential undue influence but no conflict is the appearance of an attorney in a compensation proceeding on behalf of either the employer or the employee. There's no conflict there because it's a private litigation. It is before what is technically a state agency and there is some possible potential for undue influence but there's no conflict in that case. So the problem there, pure and simple, is sufficient danger of undue influence as to require legislation restricting a legislator from practicing in the Compensation Bureau.

We on the Conflicts of Interest Committee don't think there is because the Compensation Division has the real trappings of a court. So we don't think that the fact that there is a possibility of undue influence there should preclude practice as a matter of law.

To go to another extreme, and this is one that's been commonly discussed in this context, you have a member of the Legislature representing an individual in a condemnation matter with representatives of the State Highway Department. There you have the conflict, of course. The lawyer, on behalf of his client, is contending the black

acre is worth \$100,000 and the state saying it is worth only seventy-five. There's a clear and direct conflict. But there also you have this other element of potential undue influence.

It's only human nature, I think, that a representative of the State in that situation, not a judge, a representative of the state, a negotiator, may be - I don't mean to suggest that any member of the Legislature would deliberately and openly attempt to assert any influence but it's inherent in the situation, and in that situation the negotiator or representative of the state can be or will be influenced by the position of the member of the Legislature.

As a matter of fact, let me say one other thing about conflicts.

SENATOR MARAZITI: May I interrupt a moment on this point because I do think it's important.

You illustrate that in a condemnation matter, in your opinion there would be a conflict because the State is a party, I assume, and also a question of undue influence, or element of it, rather. But in a condemnation proceeding, wouldn't you put that in the same category as the case you mentioned in the beginning about the tidelands question where there would be a conflict, the State is a party, but you had the protection of the judicial system. Would you say that extends also to a condemnation case? I'm not talking about negotiation. In negotiation I do understand that there may be a problem. But in the condemnation proceeding itself, before the Commissioners who are appointed by the Court and operate within the framework of the judicial system, would you

say that it's similar to the tidelands case before the Superior Court and, therefore, might be permissible, if you put them in the same category. In other words, there are two questions. Are they in the same category and, if so, would you treat them the same?

MR. BENNETT: We run into differences of degrees in connection with this problem and we don't have any trouble with the black areas and the white areas, it's the grey areas that are troublesome.

The Commission appointed by this Legislature in 1957, to study this program, came to a conclusion on that point and here, of course, again I want to emphasize we're talking about what the Legislature should do as a matter of law; we are not talking about what a lawyer in his own conscience and his understanding should do, we are talking about what kind of legislation we should have on this subject. And all I would like to do there is to point out that that Commission in 1957, after extensive hearings, recommended legislation that would prohibit members of the Legislature or state officers, employees and appointees from participating for compensation in condemnation negotiations and in proceedings before condemnation commissioners. They went on to say that practice in the Court was not prohibited.

SENATOR MARAZITI: Yes, I am familiar with that report and they do recommend such a statute prohibiting appearance before condemnation commissioners but do allow appearances before any court, except that negotiations shall be prohibited at any time. But would you say that if you allow

appearance before a court, a county court in the appeal from the Condemnation Commission, would it also be logical to allow appearance before the Condemnation Commissioners?

MR. BENNETT: I should say at this point, I am happy to respond to your question and to any questions but I should say that in response to these questions I would be expressing individual views, in the nature of things. These questions have not been cleared as the official position of the Conflicts of Interest Committee or of the State Bar Trustees or the Association.

I see the logic of your question. The Commissioners are appointed by the Court. They are not the employees of the Legislature, they are not really the employees of the State; they are appointed by the Court and they are compensated by the Court and are under control of the Court.

Now I personally would not exclude practice before the Commissioners. That's personal.

SENATOR MARAZITI: Thank you. I understand, as you say, that ~~some~~ of these opinions are personal. We appreciate them. We are trying to work the problem out and I think the best way to do it is by discussing it, as we have here.

I'm sorry to interrupt you so much. You may proceed.

MR. BENNETT: I am glad you do. And again I say that what we are talking about is legislation which is a minimum standard. I don't mean to say that I personally - or that I would suggest that lawyers shouldn't adhere to somewhat higher standards than the minimum standards fixed by legislation.

I want to point out that when a lawyer in private

practice runs into a conflict of interest situation - to give you a very common case, and I don't sympathize too much with this practice but it happens all the time, he represents both the buyer and seller in a real estate transaction. Under the canons of ethics it is all right if both clients are fully aware of it and consent to it. The problem with that approach by a member of the Legislature is that I don't see how his clients, people that elect him, can consent to it. I have never heard of a man running for the Legislature and announcing in the course of his campaign that if he gets elected he intends to use his position to take cases against the State. And I don't believe that I ever will hear of such a campaign in this State.

So there is no way that a member of the Legislature can get the consent of his client, the State of New Jersey, if you want to put it in terms of lawyer and client, to engage in a conflict of interest situation.

In my memory, this matter of conflict first became a matter of rather widespread public interest about 20 years ago when Governor Edison appointed a commission in 1942, headed by Roger Hinds --

SENATOR MARAZITI: The Hinds Investigating Commission.

MR. BENNETT: That's right. - to conduct an investigation into the affairs of the New Jersey State Highway Department, and Mr. Hinds and his Associates, which included the present Superior Court Judge Goldmann, filed a very voluminous printed report which included in part a finding that in condemnation proceedings in the State Highway Department, and

I'm quoting this, "owners represented by members of the Legislature, former Legislators or Attorneys identified with politics" obtain prices substantially in excess of the price of the Department's appraisal, whereas owners who are not so represented obtained a price reasonably in line with departmental appraisals.

And that report included this recommendation: "The investigation into the affairs of the State Highway Department, particularly in connection with real estate acquisitions, indicates the need of regulating the activities of Legislators and other persons where the business of the Department is concerned. It is, therefore, recommended that legislation be enacted providing that no member of the Legislature should during his term of office, and no officer or employee of the Highway Department should, either during his employment or within two years thereafter, act as agent or attorney, either with or without compensation, with respect to the voluntary settlement of any claim against or the negotiation of any agreement or other transaction with the Department or intercede or participate in any such settlement or negotiation."

No legislative action was taken.

SENATOR MARAZITI: Could I at this point ask if you concur in this observation. Apparently a recommendation of that Commission was to prohibit negotiations and settlement. In other words, it doesn't appear, from what I heard, unless I missed it, that they prohibit appearance in condemnation proceedings but they do prohibit negotiation and settlement.

Is that your understanding, Mr. Bennett?

MR. BENNETT: That's the way it seems to read. Of course, this says either with or without compensation.

SENATOR MARAZITI: Yes, that is definite too.

MR. BENNETT: It goes farther than the recommendation of the Legislative Commission in 1957 which simply said a member of the Legislature may not receive compensation. It didn't say they couldn't appear. This says, with or without compensation.

About ten years later --

SENATOR MARAZITI: Excuse me. What does the recommendation of the Bar Association, in that regard, state? Do they recommend the position with or without compensation or limit it to compensation.

MR. BENNETT: Compensation.

SENATOR MARAZITI: All right. Thank you.

MR. BENNETT: Now, more than ten years later, Governor Meyner requested another investigation as to right-of-way acquisition procedure in the State Highway Department and Special Attorney General Richard L. Amster submitted a report to the Attorney General on that investigation. In that report there was included a recommendation, as follows: "The preparation and introduction of legislation similar to 18 U. S. Code Annotated, Section 281, prohibiting New Jersey Legislators and other officials of the State Government from acting for gain in the matters in which the State has an interest." Of course, it's very broad and the reference is to Federal legislation which prohibits all members of

the Federal Congress, a very drastic prohibition from appearing before federal agencies.

SENATOR MARAZITI: May I have that citation again, please?

MR. BENNETT: You may but it's been superseded by another section - it's now 18 U. S. C. A. Section 203.

SENATOR MARAZITI: Thank you.

MR. BENNETT: I will refer to that a bit later.

Well, again in 1955 nothing happened immediately except that the Bar Association, as a result of the Hinds' Report and the Amster Report, was motivated to appoint a special committee on conflicts of interest which, after studying the problem, made a report to the Association including a specific recommended bill which was approved at one of the general meetings of the Association by a vote with only one dissenter, as I understand it. Perhaps as a result of that the Legislature in --

SENATOR MARAZITI: Who was the dissenter, a member of the Legislature?

MR. BENNETT: I have no idea.

SENATOR MARAZITI: None of those who voted for it were members of the Legislature, were they?

MR. BENNETT: I don't know that either. I just don't know.

SENATOR MARAZITI: Well, what did that statute provide?

MR. BENNETT: Well, I do have a copy of it here. It provided pretty much in substance what the Joint Legislative Committee Report in 1957 provided. I have it here if you would

like me to run through it.

SENATOR MARAZITI: No. I'm familiar with the report of the '57 Commission and, if it's basically the same as that, it prohibits appearances by Legislators and officials before any of the agencies of the State.

MR. BENNETT: Here's one paragraph which deals with the subject on which we are concentrating at the moment - this is the Bar Association's proposed bill: "No member of the Legislature shall either directly or indirectly appear before any State agency, department, division, board, commission, authority, bureau, condemnation commission, or other instrumentality of the State of New Jersey, by whatever name designated, either with or without compensation, in relation to any cause, proceeding, application, or other matter, involving any award, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, claim or other benefit. This section shall not be construed to apply to appearances before any court.

ASSEMBLYMAN POLICASTRO: It says condemnation.

MR. BENNETT: It says, condemnation commission.

ASSEMBLYMAN POLICASTRO: Practice before the court is not prohibited.

MR. BENNETT: That's right

SENATOR MARAZITI: And you're reading now from what?

MR. BENNETT: I'm reading from a bill which was annexed to a report which the Special Conflicts of Interest Committee of the State Bar Association --

SENATOR MARAZITI: That's a State Bar recommendation.

MR. BENNETT: Yes.

SENATOR MARAZITI: As of 1965?

MR. BENNETT: Well, the exact date of the report is November, 1966.

SENATOR MARAZITI: And they recommend prohibition with or without compensation.

MR. BENNETT: With or without compensation.

SENATOR MARAZITI: Now, I think you stated a few moments ago that the present position of the Bar limits it to questions where there is compensation.

MR. BENNETT: Right.

SENATOR MARAZITI: That is a modification.

MR. BENNETT: Right.

SENATOR MARAZITI: And I think Assemblyman Policastro mentioned the point that what was just read also prohibited appearances before condemnation commissioners.

MR. BENNETT: Condemnation commissioners, yes.

Well, perhaps as a result of the activity of the State Bar Association, a joint resolution was passed by the Senate and Assembly in 1956, appointing a legislative commission on conflicts of interest. Nothing happened in 1956 so the same resolution was passed in 1957 and, as the result of that, the Commission appointed John Yauch, Jr. as Counsel. Senator Murray was Chairman, and they held public hearings and made a very extensive survey of this problem during the year 1957. And early in 1958 they submitted their report, dated December 31, 1957, which I'm sure you and the members of your Committee are familiar with, and in that report, to which

I've already referred, they recommended a statute prohibiting members of the Legislature, state officers and employees, from participating for compensation in condemnation proceedings. They also recommended a statute prohibiting members of the Legislature and state officers and employees and appointees from personally appearing for compensation. And I notice a difference there, the word "personally" was not in the first, - personally appearing for compensation before state agencies which deal in matters of vital public interest, and then they listed most of the state agencies.

Parenthetically, I would think that it would not be a good idea to attempt to list the state agencies in any legislation which this Committee might decide to recommend to the Legislature because they change from time to time. I think it might be better to attempt to define them in some manner.

They also recommended in that report the adoption of a code of ethics for each state agency and for the Legislature; and they recommended the appointment of a commission, a continuing commission to deal with these problems. And the Joint Legislative Commission, in 1957, had attached to this report a specific bill which was introduced in the Legislature in 1958 - I'm wrong about that, it was not introduced -- it was introduced but never got out of Committee; it was never voted upon. That's the point I think is of some interest.

ASSEMBLYMAN POLICASTRO: You say it was killed in Committee?

MR. BENNETT: It never got out of Committee. I think

it was in the Judiciary Committee.

ASSEMBLYMAN COSTA: Mr. Bennett, this report that you gave us this morning, which is the report of the Conflicts of Interest Committee, this is the recommendation of the Committee?

MR. BENNETT: That's right, but it hasn't been approved by the Trustees of the State Bar Association.

ASSEMBLYMAN COSTA: How about the members of the State Bar Association? Has it been approved by --

MR. BENNETT: It has not been submitted to the members at large. There was no opportunity to do that. As the report indicates, when the Trustees of the Association learned that this Committee was established, as it was only a short time ago, --

ASSEMBLYMAN COSTA: Do you have any idea how many members of the Legislature are members of the New Jersey State Bar Association?

MR. BENNETT: No, sir, I couldn't give you that figure. There are many of them.

ASSEMBLYMAN COSTA: Do you think it might be well to submit this report to the membership of the State Bar Association?

MR. BENNETT: I think we should at our next general meeting.

ASSEMBLYMAN COSTA: And also to the members of the Legislature who are members of the State Bar Association?

MR. BENNETT: Well, the Legislators certainly are welcome to a copy of it.

ASSEMBLYMAN COSTA: Not only should they be welcome

to it, I think they should get one by special delivery.

MR. BENNETT: Well, I think that we will probably do just that, with an explanation of the circumstances under which this was adopted by the Committee and approved by the Trustees. In the nature of things, it was impossible to submit this for approval of the membership at large before we appeared here this morning.

ASSEMBLYMAN PARKER: May I ask a question, Mr. Chairman?

SENATOR MARAZITI: Yes, certainly.

ASSEMBLYMAN PARKER: I gather from your conclusion on page 20 that you would prohibit Legislators from appearing before any state agency, not only those listed in the report of 1957. In other words, for compensation.

MR. BENNETT: Representing the interest of someone having an interest adverse to the state.

ASSEMBLYMAN PARKER: Well, that's true in inheritance tax proceedings; that's even true in adversary proceedings such as workmen's compensation where you're going against a second injury fund, certainly. The State is a party to the second injury fund. In many cases that's mainly between two private litigants but the state has an interest there.

MR. BENNETT: You have a good point there. As I think I've already indicated, there are no absolutes in this area. If it were all black and all white, it would be easy. We have to do the best that we can in this practical world to draw what seems to be a reasonable line, and it seemed to the Committee, and obviously to the Trustees when they approved it, that it would be a little bit too drastic to

prohibit members of the Legislature from practicing before the Compensation Division, as many of them do.

But what we want to get at, of course, is a situation where members practice before state boards and agencies where their position as a member of the Legislature gives them some advantage in dealing with the state or where, even if there is in fact no advantage given or expected, there is a basis for suspicion. The Legislature ought to be like Caesar's wife, it should not only be virtuous, it should be above suspicion.

ASSEMBLYMAN PARKER: Well what I gather then is, from your conclusion, that the Bar Association's position is that no attorneys appear before any state agency.

MR. BENNETT: For compensation representing interests against the state.

ASSEMBLYMAN PARKER: Well, any time you represent a client in a proceeding, inheritance tax, alcoholic beverage, any of these professional boards, you are actually appearing there in a position that is adverse to the state.

MR. BENNETT: Correct.

ASSEMBLYMAN PARKER: So then your position is that it would be opposed to legislative attorneys or any legislator appearing in any capacity before a state agency.

MR. BENNETT: Where the state has an adverse interest.

ASSEMBLYMAN PARKER: Well, can you define one where the state doesn't have an adverse interest.

MR. BENNETT: Well, I thought I had one in the Workmen's Compensation Division but, as you point out, there's a

possibility there. I don't think we would draw the line at that point.

ASSEMBLYMAN PARKER: Well, where are you going to draw the line on a conflict? First of all, can you define or draw the line on a conflict? You appear to be drawing a line on the adverse interest part. Can you define for me what a conflict is and then tell me where we don't have a conflict, even before the courts - even before the courts because we approve their salaries --

MR. BENNETT: That's not a conflict. If you're representing John Jones against Joe Smith in the Superior Court, I don't see that as a conflict. There may be, theoretically, a potential possibility of undue influence because the judge might be inclined to treat a member of the Legislature --

ASSEMBLYMAN PARKER: Why isn't there conflict there? This man, this judge, depends on us for his appointment, ratification of his appointment and for his salary and for his pension, for any other matters affecting the courts, for the assistants that are allowed to him, and, in many cases, well, just in other areas of his particular personal needs. Why isn't that a conflict, just because it's between two private litigants?

MR. BENNETT: Well, because you are not fighting with the judge, you're fighting with the other fellow's client. There's a possibility of undue influence but I think it's so remote in that situation that it is not something that the Legislature has to do something about.

ASSEMBLYMAN COSTA: Then, too, Mr. Bennet, don't you

think that the outcome of that case might affect the state, but remotely? John Jones suing Joe Smith and the outcome of that case --

ASSEMBLYMAN PARKER: Well, take these pollution cases which we now have. Many of our local utility authorities and sewage authorities are under injunction with the State Department of Health and they're in litigation and some members of the Legislature represent these authorities in their private practice and this is against the state. Would you say that we're not permitted to appear?

MR. BENNETT: That's exactly what I think you should not be permitted to do.

SENATOR MARAZITI: Let me interrupt you just a moment and take note of the presence in the Assembly balcony of school children and teachers and welcome them here this morning.

This is a proceeding before a Commission of the Legislature, consisting of Senators and Assemblymen. The Commission was created under a resolution introduced by Assemblyman Costa, sitting at my right, and other Assemblymen, and the purpose of this Commission is to hear witnesses on a question before the Legislature involving alleged conflicts of interest. The purpose is to procure information to determine if we should recommend any legislation in this particular area. This is one of the methods and one of the means by which the Legislature operates, secures information, and it basically is the beginning of the legislative process.

We are very happy to have you here and we hope that

you will find the proceedings interesting.

I'm sorry to interrupt you.

Here we have on my extreme right, Assemblyman Kean, Assemblyman Parker, Senator Coffee, Senator Giuliano, Assemblyman Costa, Assemblyman Policastro, and Senator Lynch.

I'm sorry, gentlemen. Did you finish your answer, Mr. Bennett?

MR. BENNETT: I think I did.

ASSEMBLYMAN PARKER: I think I understood it, although I'm not sure.

I don't have fixed in my mind where you are going to draw the distinction between what is or is not a conflict of interest. I have tried to listen to your position and I just can't understand, I cannot conceive of any appearance or anything that would not have built into it some kind of conflict or the appearance of a conflict, as you have indicated, at least to some degree.

MR. BENNETT: I agree with you. I don't draw the line. I say that whenever a member of the Legislature appears in a proceeding against the interest of the state, there's a conflict. But I'm saying, we live in a practical world; this isn't the millennium. We have to draw the line on some practical basis and I'm suggesting that we draw the line on the basis that if it's in court there should be no legislative prohibition against it.

ASSEMBLYMAN PARKER: Well, let me ask you this. Don't you think it would be a little more fair to everybody, and without having to draw arbitrary lines as to what is

or is not the standard of conduct, because this is objective, wouldn't it be better to require full disclosure by every member of the Legislature, not only his assets but of his fees and everything in every connection that he has and in that way the public could consent, as you read the canons of ethics, and that consent would then be given by the public at the polls at the next election; there would be a complete, fair and open disclosure of everything, the man's assets, his interests, everything pertaining to this, and then there would be a consent at a later time or the public would be kept fully aware, rather than try to draw arbitrary lines.

MR. BENNETT: Well, you now have a statute, as you know, which requires disclosure of any representation by a member of the Legislature of any one having an interest adverse to the state.

ASSEMBLYMAN PARKER: We are well aware of that. I mean broadening that substantially.

MR. BENNETT: And it hasn't worked very well so far as I think you know.

ASSEMBLYMAN PARKER: No, I don't know that it hasn't worked. I don't understand your comment there.

MR. BENNETT: Well, the reason I say that is that a representative of this Committee attempted to review those so-called public records a week or so ago and he was advised finally - he saw the Senate statements, but when he tried to get the statements that are filed by Assemblymen he finally got to talk to the Clerk of the Assembly, Mr. Marcus and Mr. Marcus wouldn't let him see them until he

found out -- this young man was an attorney - found out who he was and why he wanted them and, since the young man stood on his rights and said, "I'm a citizen, I have the right to see them," Mr. Marcus said, "There may be things that may be damaging to certain Assemblymen in the statements," and refused to let him see them. So that's the difficulty with the disclosure law.

ASSEMBLYMAN PARKER: Well, the press here in Trenton - they seem to have them in the paper every week. Mr. Josephson, there, seems to get them.

MR. BENNETT: I've seen the accounts in the paper but apparently there is some reluctance sometimes to let people see them.

SENATOR MARAZITI: Assemblyman Kean, I think, has something.

ASSEMBLYMAN KEAN: I might say that I am Chairman of the Assembly Ethics Committee and if the gentleman had the interest to do this called me on the phone, they would have been made available to him fully. This is the first knowledge I have had of anybody trying to get to see them and not having been allowed to, and I suspect it's the first knowledge of any member of the Committee. And it would seem to me the obvious place to go, if there was any trouble, was to at least pick up the phone and call the Chairman or stop by, if he was down here, and see the Chairman and say, I am having trouble. I think this would be the normal course to follow and I am surprised he didn't.

MR. BENNETT: He shouldn't run into trouble, sir.

These are public records. The Joint Legislative Committee on Ethical Standards, constituted pursuant to this Act, has adopted rules and regulations - of course, the act itself says they are public records.

ASSEMBLYMAN COSTA: Mr. Bennett, couldn't this have been a misunderstanding?

MR. BENNETT: It was.

ASSEMBLYMAN COSTA: Assemblyman Kean has made it quite clear that the records are available and if there's any question or any doubt, if he's contacted he will follow through on them.

MR. BENNETT: Good.

SENATOR MARAZITI: I think, to bring this particular point to a head and proceed, Assemblyman Kean, who is Chairman of the Assembly Committee, has stated his position very clearly and I am certain that there will be no question at all about any information that is required being procured by addressing the Chairman or a member of the Committee.

SENATOR COFFEE: Mr. Chairman, may I ask a question?

SENATOR MARAZITI: Senator Coffee.

SENATOR COFFEE: Did the representative of your Committee eventually see these records?

MR. BENNETT: I don't know that he has seen them yet.

I am sure if he had identified himself as a representative of the State Bar Association and gone beyond Mr. Marcus, - I have no doubt he could have seen them. But I think the point is that any citizen, for any reason, any time, as the rules of the Committee itself say, should be

able to walk in and look at them.

I didn't intend to go into this, gentlemen, but --

SENATOR MARAZITI: Well, I think it's in response to the question as to whether or not the existing statute has worked and I think you are pointing this out as one instance in which you feel it may not have worked. I don't think we should be hung on this particular point and Assemblyman Kean has very clearly stated that there is no problem whatever and I am certain if any additional information is required by your organization or your representative, there is no problem at all.

MR. BENNETT: Well, thank you very much.

ASSEMBLYMAN PARKER: This is not only between the lawyers and the members of the Legislature but let me ask you just a hypothetical question. Suppose that I own a finance company or I work for a bank --

ASSEMBLYMAN POLICASTRO: Barry, excuse me. Before we get off of this subject about the young man asking for the records, is he here now?

MR. BENNETT: I don't know that he is.

ASSEMBLYMAN POLICASTRO: I mean, do you know the party's name?

MR. BENNETT: Certainly.

ASSEMBLYMAN POLICASTRO: And he was told by the Clerk that if they were disclosed there would be some damaging things revealed?

MR. BENNETT: I have a letter here over his signature and what he says is that, he answered that "he felt he

could not turn these statements over to me without me revealing my 'purpose' for wanting to see them since 'there may be things that could be damaging to certain Assemblymen in the statements.'" and Mr. Marcus felt obliged to protect the Assemblymen.

SENATOR MARAZITI: You know, we can't accept any hearsay statements here as fact, speaking now on behalf of members of the Legislature. We can't accept that statement as being correct, that there may be anything damaging to anyone. Let me say this, I do agree it's a matter of public record, the statute says so, and Assemblyman Kean has stated very clearly that they can be procured. In other words, I don't want this Commission to be hung on an issue of what controversy a man had in procuring records. If a man can't go into the Secretary of State's office and get a public record, that's a matter of enforcement and not the subject of our Commission. The same in connection with this particular application made to the Clerk of the House. And I am not prejudging this thing one way or the other except that I do think, and I concur with the feeling, I'm sure, of Assemblyman Policastro and the rest here, that whatever is required by statute - public records should be disclosed. This is not an issue and I am just wondering if we could move on.

MR. BENNETT: Well, I really think we should but I don't want to leave it, however, without saying again that I didn't intend to get into this matter.

SENATOR MARAZITI: You understand now that whatever

information you desire you can secure.

MR. BENNETT: I tried to avoid it. I am not trying to blacken the reputation of anybody. I think this is an unfortunate diversion but it is pertinent, perhaps, to the question --

SENATOR MARAZITI: It's not unfortunate. We should know these things.

MR. BENNETT: Just to require disclosure, I think, is inadequate.

ASSEMBLYMAN POLICASTRO: Personally, I think Mr. Marcus should be asked whether he did say a thing like that.

SENATOR COFFEE: I feel that we should find out the exact circumstances surrounding this accusation and we should have an explanation before this Commission as to those circumstances.

ASSEMBLYMAN COSTA: Mr. Bennett, may we have a copy of that letter?

MR. BENNETT: Yes.

SENATOR MARAZITI: Well, may I suggest this. Would you make available to the Commission - either let me have a copy of the letter or Mr. John Lee, at your extreme left, - let us have a copy of that letter and the Commission will take this particular phase of the matter under advisement.

MR. BENNETT: I will be glad to.

ASSEMBLYMAN PARKER: Speaking for part of the leadership in the Assembly, I will certainly bring this to Mr. Marcus' attention and direct him that this is public information, so that this will not happen in the future. I know

he may not have understood the complete inquiry but I can assure you that he will be directed to make available to any member of the public these documents. I know they are available to the press, members of the press are here, and I know that they get them within days of the time they're filed. And I can assure you that he will be directed to make these available to everyone.

If I can get back to my question, assuming an attorney is on retainer for many clients or represents many clients, manufacturing clients or somebody who works for a bank, - would you say that they have a conflict of interest at any time they are voting, say, on unemployment matters which affect their client, matters such as workmen's compensation which affects their client, matters of these recent banking amendments? Many of these Legislators may have had some interest or stock in some of these banks. Are these all conflicts of interest?

MR. BENNETT: It's possible in particular situations. I'm not suggesting that legislation should be adopted to stop them from serving in connection with these problems but, as a matter of theory, yes, it's possible.

ASSEMBLYMAN PARKER: Is it any worse conflict to have somebody represent a client in an adversary proceeding before an agency of the State than it is to have them vote on a matter that they may have an interest in? My point is, I don't see how you can draw the line on conflict. Isn't there a conflict in everything?

MR. BENNETT: There are potential conflicts all over the place. Some of them are of more substance than others

and some, I think, are more damaging to the public image of a Legislator and state officer and employees. There are many areas, as you well know, in the law where you can't draw a clear line. What's negligence? One man differs from another as to what is negligence yet a jury is deciding every day in the week that somebody is negligent or somebody isn't negligent.

ASSEMBLYMAN COSTA: Well, Mr. Bennett, would I be correct in saying that the Bar Association or the group that you represent would be very happy if some type of legislation were enacted that would take care of the very obvious conflicts, and these fringe areas we could talk about later?

MR. BENNETT: I think that's a fair statement of the position of my Committee and of the Trustees.

ASSEMBLYMAN KEAN: Do I understand your report to say that any prohibition that you would extend to a lawyer-legislator would also be extended to every one of his partners?

MR. BENNETT: Well, this raises another very difficult problem. Personally, - and we haven't dealt with that in this report and, as I said, a while ago, I am not authorized by the Bar Association to express my own opinions and have them accepted as opinions of the Bar Association. Personally, I think this may be covered by use of the word "compensation." It seems to me that if a member of the Legislature doesn't appear before the agency in a matter against the interest of the State, and doesn't get any compensation for it by reason of an arrangement with a partner that a partner will handle it, make the appearance and will

receive all of the fees, with none of it going to the member of the Legislature, it might be possible to draw the line there.

ASSEMBLYMAN KEAN: You mean, none of those fees would go into the firm, in other words.

MR. BENNETT: That's right, a special arrangement. This, I say, is perhaps the way you can draw the line on the legislation. Personally, if I were in that situation, I wouldn't want to have my partner make the appearance either because, as I say, we not only should be virtuous but we should be beyond suspicion, and there are some people who are going to be suspicious if the partner of a Legislator makes an appearance and gets a fee in a situation where the statute says the Legislator himself may not do it.

ASSEMBLYMAN KEAN: I think you're right, sir, and I would question the completeness of your report, or the report of your Committee, until that's spelled out in detail.

MR. BENNETT: Well, as we say in the report, we are not attempting at this time to propose specific legislation. We thought that all we could do at this time was to indicate in broad general outline what we thought the legislation should accomplish. And, incidentally, you may find that Mr. Haines, who is Vice Chairman of our Committee, may disagree with me on this and some other points, personally.

ASSEMBLYMAN COSTA: Have you finished, Mr. Bennett?

MR. BENNETT: Well, finished with that answer. Should I proceed with this now?

ASSEMBLYMAN COSTA: Please proceed.

MR. BENNETT: All right. I will try to get over this quickly.

In 1959, a bill was introduced, Assembly Bill 147 sponsored by Senator Maraziti, - he was then an Assemblyman, I believe, Assemblymen Maraziti, Franklin and Deamer, which was substantially the same as the bill which he now has pending, which didn't go as far as the Legislative Commission Report recommended but which was a long step forward from anything that existed, so the Bar Association said they would take three-quarters or seven-eighths of a loaf and this was a step forward and they would approve it. But that didn't pass either.

What we did get, much later, is the bill which has been referred to which simply requires the filing of information statements and which we think is not sufficient, in fact it may have an adverse effect in that a Legislator may assume that once he has filed the statement there are no other limitations on his conduct, he can engage in conflicts without limitation so long as he makes the disclosure. I think that's the wrong approach.

This Committee then submitted an application to the Supreme Court's Advisory Committee on Professional Ethics for some guidance for the benefit of lawyer members of the Legislature as to what as lawyers, they should do. As I think you know, the Supreme Court Committee declined to act on that on the ground that they didn't want to interfere with the separation of powers between the Court and the Legislature. They were hoping that the Legislature would

take some action and, besides, the American Bar Association is in the process of amending its canons of ethics.

In that application to the Ethics Committee, we referred to the Federal law, which I cited a while ago, - it's now 18 U.S.C.A. Sec. 203 - and which we refer to in our report as a guide for what we think the New Jersey Legislature should do. The Federal law prohibits any member of the United States Congress from receiving any compensation for any service to be rendered by himself or another in relation to any proceeding, application, request for a ruling, or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct or substantial interest before any department, agency, court martial, officer, or any civil, military or naval commission.

We also cited to the Supreme Court's Ethics Committee, in this application, a decision of the Supreme Court of the United States, in *Burton against the United States*, 202 U.S. 344, which dealt with the predecessor of this statute which I have just read, and I would like to commend to your consideration the language of the Supreme Court in that case where it said that Congress, in passing this statute, knew, as indeed everybody may know, that executive officers are apt, and not unnaturally, to attach sometimes perhaps undue weight to the wishes of Senators and Representatives.

Evidently the statute has for its main object to secure the integrity of executive action against undue influence upon the part of that branch of the government

whose favor may have much to do with the appointment to or retention in public position of those whose official action it is thought to direct or control, the evils attending such a situation are apparent and are increased when those seeking to influence executive officers are spurred to action by hopes of pecuniary reward.

It may also be of interest to this Committee that the Supreme Court's Advisory Committee has handed down many opinions on professional ethics as applied to lawyers. They have never handed down one, obviously, as applied to members of the Legislature. But, when dealing with analogous problems at the municipal and county level, they've gone very far in holding that anyone who holds an official position for the county may not practice before county boards and agencies, or that anyone who holds any official position with a municipality may not appear and practice for compensation before municipal boards and agencies.

And we submit that what is fair and reasonable, as applied to county officials and municipal officials, ought to apply equally to state officials.

However, the Supreme Court's Advisory Committee, for the reasons I've said, apparently is not willing at this time to hand down any guidelines applying to the Legislature. Therefore, it would seem that if anything is to be done it is necessary for the Legislature to adopt its own rules and guidelines. And we, therefore, respectfully submit that legislation should be adopted at this time, going beyond the mere requirement of disclosure.

Our conclusion, as set forth in this report, states the official position of the Committee and of the Association, and we said here: We therefore conclude that a proper place to draw the line between the legitimate interest of lawyer-legislators, state officers and employees in the practice of their profession and the legitimate interest of the State in the elimination by law of the possibility of "conflicts" between lawyer-legislators, State officers and employees and the State, requires the adoption of legislation, substantially similar to that adopted many years ago by the Congress of the United States to govern its own members, which will prohibit any member of the Legislature and State officers and employees from representing before any State Agency, directly or indirectly, for purposes of financial gain, any person whose interest is adverse to the interest of the State of New Jersey.

ASSEMBLYMAN PARKER: May I ask just one question?

MR. BENNETT: Surely.

ASSEMBLYMAN PARKER: Would that preclude an attorney from handling an estate and filing the inheritance tax return?

MR. BENNETT: I think it would preclude a member of the Legislature from doing it, the way it reads. Now I want to point out that the 1957 report of the Legislative Commission expressly excluded from its recommendation practice before the Transfer Inheritance Tax Bureau.

ASSEMBLYMAN PARKER: No, it had it in there. The '57 report included that.

MR. BENNETT: No, it says, "before the following agencies" and then they say, "The Department of the Treasury,

Division of Taxation, excepting Transfer Inheritance Bureau."

SENATOR MARAZITI: I know the position of the Association but could you give us your thinking on that particular point, speaking as an Attorney, or would you care to give your own view as to whether you would except inheritance tax reports.

MR. BENNETT: Well, frankly, I've thought about this. It's a thorny point. It would be possible, of course, to say that it would<sup>be</sup>/permissible for a member of the Legislature to prepare and file the report but that if there were any issue or any point, either valuation or inclusion of a gift in contemplation of death, then he should discontinue his association with that problem and should turn it over to some other lawyer. That's one way to do it. But the other would be to suggest that he should turn that particular phase of estate administration over to another lawyer in the first place. This doesn't mean that he can't handle the administration of the estate generally but he could avoid this problem by bringing in someone else to prepare and file the Transfer Inheritance Tax report.

SENATOR MARAZITI: Now, starting at this end, do we have any questions? Assemblyman Policastro?

ASSEMBLYMAN POLICASTRO: I want to ask one question, Mr. Bennett. How about an attorney who is in an office with other attorneys, just sharing offices?

MR. BENNETT: I don't see any problem there. Partners present a different problem.

SENATOR LYNCH: What is your position, sir, with

reference to the partner of a lawyer-legislator? Would he be prohibited too?

MR. BENNETT: I don't think he would be prohibited. As I've indicated, this is my personal view.

SENATOR LYNCH: Yes.

MR. BENNETT: I don't think he should be prohibited so long as the lawyer-legislator partner does not participate in any way in the fee or doesn't make any appearance. It might be advisable if he would appear in his own name rather than in the firm name, just to avoid all appearance that might be the basis for suspicion. That's my personal view.

SENATOR LYNCH: Thank you.

SENATOR MARAZITI: Along that line, I think you mentioned this point, in referring to the 1957 report, which provides that no member of the Legislature, and so on, shall personally appear before or negotiate, and so on, - personally appear before a list of departments. What do you understand that to mean - - a partner could appear?

MR. BENNETT: That's the way I read that language.

SENATOR MARAZITI: I noted you did stress that point and I wanted to ask you that question. In other words, it would appear that a partner could appear, according to this report.

MR. BENNETT: That's the second section.

SENATOR MARAZITI: The second section, right. And the first section about land acquisition looks like a total prohibition, doesn't it?

MR. BENNETT: That's the way I read it.

SENATOR MARAZITI: Right. And the recommendation of the Bar Association, in reference to this second point, the list of departments, and so on, does that have language "personally" appear?

MR. BENNETT: It doesn't use the word "personally." It does say for compensation and you can conclude that if the partner doesn't get any part - the lawyer-legislator partner doesn't get any part of the compensation, he wouldn't necessarily be precluded. However, as I say, we merely suggest in broad outline what we think the Legislature should do; we haven't attempted to draw the bill or to comment on any of the pending bills.

SENATOR MARAZITI: Assemblyman Costa?

ASSEMBLYMAN COSTA: I have no questions.

SENATOR MARAZITI: Senator Coffee?

SENATOR COFFEE: I have no questions.

SENATOR MARAZITI: Assemblyman Parker, do you have another question?

ASSEMBLYMAN PARKER: No.

SENATOR MARAZITI: Assemblyman Kean?

ASSEMBLYMAN KEAN: No.

SENATOR MARAZITI: Just a question or two here. On the question of conflicts of interest and undue influence, I think you made a very precise and understandable distinction between the two. You're talking about prohibiting conflicts and there are cases where there may be undue influence and we're not talking about that.

Now on the question of undue influence, just to get to

that for a moment, that could also occur, could it not, if the judge happened to be a very, very close friend of an attorney, who is not a member of the Legislature.

MR. BENNETT: Of course.

SENATOR MARAZITI: So, as you say, we live in a practical world, it's not that you are trying to have elimination of all possible elements that would affect the situation, so you are drawing a distinction - I think you did very well - and you are interested in avoiding the major conflicts of interest, and the question of influence, of course, shouldn't be there either but you are directing your comments to the question of conflicts. Is that correct?

MR. BENNETT: Well, yes, except that wherever you have a conflict with respect to a member of the Legislature, you also have some question of influence.

SENATOR MARAZITI: Yes, you do. But there are other areas where you don't have a member of the Legislature, where you have influence too.

MR. BENNETT: Of course, there's no question about it.

SENATOR MARAZITI: So it isn't just members of the Legislature who are the ones with the horns.

MR. BENNETT: You and I probably know some lawyers who have more influence with some judges than some members of the Legislature have with some judges.

SENATOR MARAZITI: That's correct.

MR. BENNETT: I hope you won't ask me to name any names.

SENATOR MARAZITI: No.

ASSEMBLYMAN COSTA: Mr. Bennett, you're not hoping for a Utopia, you just want to try to improve the situation in the best manner possible.

MR. BENNETT: That's right. I think there's a great deal of public interest in this subject in the State today. A great many people are concerned because there is a problem and I think the Legislature would be well advised to assure the people by enacting some meaningful legislation that would cover the most significant problems, not every problem.

SENATOR MARAZITI: Yes. Now you're concerned in your report basically with a question of representation and appearances. I don't think the report - or did the report go into the question of a Legislator voting on legislation? You're not interested in that particular phase?

MR. BENNETT: I wouldn't say we're not interested but our report doesn't touch on it. That should be considered too, I think.

SENATOR MARAZITI: Now, have you had an opportunity to look at some of the legislation, Senate 320, which is a bill that was introduced this year and basically the same bill that's been introduced for a number of years? It is not precisely the bill recommended by the 1957 Commission. There are modifications. But if you have had a chance to look at it I would like to ask you generally your thoughts on it.

MR. BENNETT: Well, this is substantially the same bill that you and two other Assemblymen sponsored back in 1959, and at that time the Bar Association said that although

the bill wasn't the whole loaf that it hoped to get, it was a very big step forward and they approved it, they got behind it.

SENATOR MARAZITI: Yes, and I'd like to point out, in fairness to you and the Bar, that there is a distinction between that bill and the Commission Report of 1957 and this is what it is and I would like your opinion on it.

It basically is the same, as far as acquisition of land practice is concerned, that is prohibiting negotiations and so on, it's basically the same. The difference comes in the appearances before the departments. Senate 320 would permit, the way it's worded now, appearances before the departments provided the fee, the lawyer's fee, let's say, - we're talking about lawyers, it could be an engineer too - the fee is not contingent on the result. In other words, there would have to be a predetermined fee whether the person won the case or lost the case before the Motor Vehicle Department or some other agency or bureau.

Could we have your view on that particular point?

MR. BENNETT: Yes, Senator.

I have read the bill very carefully and I compared it with the other legislation and I think that we would have a much better situation if we didn't permit contingent fees.

SENATOR MARAZITI: In other words, you're suggesting --

MR. BENNETT: In other words, if we didn't permit any fees, if we just say, may not do it for compensation. It's very difficult to determine whether a fee is contingent or not. Many lawyers don't fix their fee until after the job

is done. That's doesn't mean it's contingent, we take it on what we lawyers call a "quantum meruit" basis.

SENATOR MARAZITI: But if the bill should require the fixing - let's not use that word "fixing" it might be misunderstood. If the bill should require the determining of the fee before the appearance, immediately, let's say, would that make some difference?

MR. BENNETT: Well, I think it would be a big improvement on the situation but, in my opinion, it wouldn't be enough. I think there should be a prohibition on practicing for compensation.

SENATOR MARAZITI: All right. There's another area that I'm concerned about.

On land acquisition cases, this point has been raised and I think it needs consideration and discussion, - I don't disagree with you, in fact I agree with you, that there should be no negotiation between an attorney and any department of the State in connection with the acquisition of land. And this prohibition should exist throughout the entire proceeding. If he appeared in a condemnation case or in court, there should be no negotiation at any time.

Now some have raised this point, and it is a good point, - what happens if the case is being tried in the county court on appeal from condemnation commissioners and there is a chance for reasonable settlement but the attorney, who is a member of the Legislature, says to his client, I can't do it because it is prohibited. Do you have any suggestion as to what can be done in a case like that? Do you see the

point involved there? It has been mentioned that perhaps a client might suffer in that case if there cannot be a settlement.

MR. BENNETT: Well, of course, the best solution would be for the lawyer not to get into that fix in the first place.

SENATOR MARAZITI: Initially.

MR. BENNETT: No, he shouldn't take condemnation cases because he's bound to get into trouble. In my opinion, he's bound to get into a conflict problem unless he tries it right on through and then gets a judgment. Any time there's a settlement, you've raised this question of whether the settlement was influenced in some way by his position against the State.

SENATOR MARAZITI: Perhaps the only other alternative could be substitution of attorney.

MR. BENNETT: Yes, at that point you could substitute an attorney just as I suggested you might solve the transfer inheritance tax problem by having somebody else handle that particular aspect of the administration of the estate.

ASSEMBLYMAN PARKER: I don't quite understand that because you're helping somebody comply with the law. Don't they have to comply with these tax regulations? You're referring to where there is negotiation or where they file the inheritance tax, just general where there is no question as to what is due. Are you going to draw that line, that distinction?

MR. BENNETT: Well, you can't tell when you file a return whether or not something more is due. Moreover, when

you prepare the return - I've prepared many of them - you have questions in your own mind, is this or is it not something that should be reported. And if you are a member of the Legislature, you're on both sides of that question, sitting right there in your office.

Now assume that you file the report, you've put in everything that you think should go in, you can't tell whether the Transfer Inheritance Tax Bureau is going to question values and you may get into a big hassle over the value of a closed corporation, - you say it's worth less, they say it's worth more, you have a direct conflict with the State. Or you may get into a difficulty as to whether or not a transfer was in contemplation of death, which is one of the iffiest propositions in the world.

Now, there aren't any hard and fast rules in these areas. It is only in the most simple estate where the asset is money in the bank or a list of securities that you can't question.

ASSEMBLYMAN PARKER: All right. So, as I understand it, that's one of your definitions of adverse.

MR. BENNETT: Yes, sir.

ASSEMBLYMAN PARKER: How about with the Secretary of State for filing a non-profit corporation?

MR. BENNETT: Just filing it?

ASSEMBLYMAN PARKER: Yes, filing it. You have to have approval by - well, somebody who reviews it, that this is a non-profit corporation. You incorporate something and set forth what you think is a non-profit corporation. Doesn't

that have to be reviewed by the State and isn't that subject to different tax regulations than any other type of corporation? Is that an adverse situation?

MR. BENNETT: Well, frankly, I hadn't thought of it in that way. I've never been in the situation where there was a question about it. This is normally a perfectly routine proceeding.

ASSEMBLYMAN PARKER: Well, isn't there or doesn't the law require - what is it, a standing master or somebody review each non-profit corporation certificate to determine whether, in fact, it is, before they record it in the Secretary of State's Office?

MR. BENNETT: I'm not familiar with that procedure, to be quite frank.

ASSEMBLYMAN PARKER: How about just filing a regular corporation with the Secretary of State? Isn't there some area where the State would be adverse there, especially when it comes to evaluating the stock that initially sets up the corporation?

MR. BENNETT: Well, that's pretty routine too, in my experience. To be practical about it, I wouldn't see any reason for any problem there because, if you need a special exception to take care of that, I wouldn't be, personally, opposed to a special exception.

ASSEMBLYMAN PARKER: Well, what I'm getting at is, I am just trying to find some area where anything with the State would not be adverse.

MR. BENNETT: Well, I think you have to determine,

case to case, whether it's adverse.

ASSEMBLYMAN PARKER: And who is going to determine that, this Commission?

MR. BENNETT: Well, like other laws. Everybody who has to comply with a law reads the law and makes his own decision. Of course, I would propose that any act include the establishment of some sort of review body which could give advisory opinions.

ASSEMBLYMAN PARKER: Then if that's so, how in the world are we going to draw any legislation if it has to be determined on a case by case basis?

MR. BENNETT: Well, as I say, like any other legislation you have to determine whether the facts fall within the ambit of the statute. We lawyers do this seven times every day. I don't see that that's a problem.

ASSEMBLYMAN COSTA: Mr. Bennett, isn't it true, though, that there are certain situations which are quite evident.

MR. BENNETT: I think so.

ASSEMBLYMAN COSTA: Just to resolve that much would be a step forward.

MR. BENNETT: Right.

ASSEMBLYMAN COSTA: And regardless of what bill is introduced, you are always going to find questions coming up such as some that Mr. Parker just raised.

MR. BENNETT: I've never yet seen a piece of legislation where some lawyer couldn't come up with a borderline case that would raise some question as to whether it did or didn't fall within the statute; and this is no different.

But I don't see that as a reason for not having any statute.

ASSEMBLYMAN COSTA: May I ask you one question? On Senator Maraziti's bill, S-320, did I understand you to say that the Bar Association did approve it or did not approve it?

MR. BENNETT: S-320?

ASSEMBLYMAN COSTA: S-320.

MR. BENNETT: It approved a bill which was introduced back in 1959. It did it with some reluctance because it wasn't as much as it thought should be done.

ASSEMBLYMAN COSTA: Have they taken a position on S-320?

SENATOR MARAZITI: Well, let me say this, for the benefit of the Assemblyman and Mr. Bennett, it's the same bill, we've been putting it in for ten years. So, if it would help you, S-320 is a 1969 bill.

MR. BENNETT: Assembly 147, 1959.

SENATOR MARAZITI: Yes. Maybe a comma or two have been changed but basically it's the same.

MR. BENNETT: Yes. Well, they said in 1959 that they would go along with it because they thought it was a big improvement.

ASSEMBLYMAN COSTA: What do they say in 1969, or haven't they said?

MR. BENNETT: Well, they have said, in this report, that they don't think a Legislator should practice before the State agencies for compensation, which is different from S-320.

ASSEMBLYMAN COSTA: Thank you.

SENATOR GIULIANO: Mr. Bennett, you said before that the Association did approve Senator Maraziti's bill with reluctance. What did they object to in the bill?

MR. BENNETT: The fact that it allowed contingent fees for practice before state agencies.

SENATOR MARAZITI: In other words, there are other features of the bill that follow the 1957 report and am I correct in saying that as far as the balance of the bill, it seems that there is approval except there is a difference on the question of appearance before state agencies. The bill does prevent negotiations for land acquisition, you concur with that.

MR. BENNETT: Right.

SENATOR MARAZITI: But on the appearances before the agencies, you would recommend and the position is that no appearance be allowed.

MR. BENNETT: For compensation.

SENATOR MARAZITI: For compensation. Whereas that section of S-320 allows appearance on a predetermined fee. This is the difference.

MR. BENNETT: That's the difference. That's the substantial difference.

SENATOR MARAZITI: Right. All right, thank you very much, Mr. Bennett. We certainly appreciate your assistance.

Oh, Assemblyman Kean, I'm sorry.

ASSEMBLYMAN KEAN: One very brief question. This word "compensation" - I'm a non-lawyer and your profession has always been sort of a mystery to me, anyway, but I would

like to know, when you talk about "for compensation" can you give me a couple of examples when a lawyer would appear before a state agency not for compensation?

MR. BENNETT: It isn't done very often, I suspect.

SENATOR MARAZITI: Political favor. You can do that according to the recommendation of the Bar.

MR. BENNETT: Well, he might have a brother-in-law who is in some kind of an issue with the state. I've never yet had a fee from my brother-in-law.

ASSEMBLYMAN KENA: So "for compensation" is not important then, he just shouldn't appear.

MR. BENNETT: No, for compensation is important. We think if a Legislator may not appear for compensation the problem will practically disappear. That's why we say for compensation.

SENATOR MARAZITI: Mr. Bennett, I don't want to labor the point but I do think there is a case to be made where the fee is determined. In other words, if I'm going to charge you \$300 to appear before the Motor Vehicle Department hearing to restore your license and I get that \$300 whether I win the appeal or lose the appeal, don't you think that the lawyer-legislator would be less apt to use undue influence because he is going to get his \$300 and all he has to do is do his job as a lawyer. In other words, I don't say that it's as rigid as the Bar's position but I do think it has a degree of merit. In other words, if it functioned properly, a predetermined fee would be determined and fixed and then the lawyer would appear and do

his work and the outcome would not influence the amount of the fee. There's some merit to it, the way it appears to me, although I do believe the other position is more rigid and might be more desirable.

MR. BENNETT: I'll have to agree with you, everything else being equal and human nature being what it is, he'd be less apt to attempt to exert influence if he had a fixed fee, win or lose, than if his fee were contingent on the outcome.

SENATOR MARAZITI: And then when he tells the client, listen you're paying me so much because it's the law and I get this whether I win or lose, I think there would be less probability that clients would go to lawyer-legislators in an effort to --

MR. BENNETT: Well, I don't know that I could necessarily agree with that. You're asking us to psycho-analyze --

ASSEMBLYMAN POLICASTRO: Well, Mr. Bennett, then your position is that they shouldn't appear in the first place, with or without a fee.

MR. BENNETT: No, their position is they shouldn't be allowed to appear for compensation.

ASSEMBLYMAN POLICASTRO: Right.

SENATOR MARAZITI: Thank you, Mr. Bennett. We appreciate your assistance.

MR. BENNETT: Thank you very much. You have been very patient and very courteous.

ASSEMBLYMAN POLICASTRO: May we have a copy of that

letter?

SENATOR MARAZITI: Yes, if you will give a copy of that to Mr. Lee.

Before calling the next witness, I would like to have the record show that we have present Senator Coffee, Assemblyman Parker and Assemblyman Kean who came in just about two minutes after we started. Let the record show they are here with us.

I understand that Assemblyman Woodson will be here shortly. He had to attend a funeral this morning.

Now I would like to go out of order, for a moment.

Is there anyone else from the Bar Association who would like to appear before us and make a statement? Well, I would ask that you wait a few moments because we have a gentleman here who is Assistant Professor at Eagleton Institute of Politics at Rutgers University who has to get back to class. So at this time I will call Alan Chartok. You may proceed.

A L A N C H A R T O K: Gentlemen, The Eagleton Institute thanks you for the invitation and the opportunity to appear in connection with pending Senate Bill 320 and Assembly Concurrent Resolution 44.

You have heard rather complete testimony from the Bar Association on this legislation and I intend to make just a few brief comments on this type of legislation in general as it pertains to our legislative process.

As you know, the Eagleton Institute has been involved in programs concerned with legislative modernization in the

fifty states. Its first study was of the New Jersey Legislature and it was submitted to this body in 1963. Since that time, we have studied many other legislatures and in some cases we have developed new ideas about making the legislative branch of government competitive with the bureaucracy and the governor.

On the subject of conflict of interest legislation, it is our belief that strong legislation of this type is in the best interests of the Legislature. It defines terribly grey, difficult areas in which individual legislators could unwittingly make mistakes. It helps to convey the appropriate image of an honest group of individuals, dedicated to public service. We believe in the principle that state legislators should not practice in any capacity for fees before state agencies.

I would like to speak to this point of the corporation exception, which was raised before, I think somewhat appropriately. The New York State legislation of this type, which has now been proposed, does make that one exception, and I believe it might be appropriate in this case too.

Some legislative bodies have such rules and it is appropriate that New Jersey lead other states in this area.

It is our firm belief, however, that under no condition should the Legislature put itself into a self-deprecating position by allowing the Governor to appoint all members of a commission overseeing the implementation of conflict of interest legislation. Therefore, Section 10B

of Senate Bill 320 seems to us to be heading in the wrong direction. The majority and the minority in each house should have one appointment to the board, as well as the Governor. We believe that it would be advisable to make the commission bipartisan, as attempts to use this type of commission in the past to make political hay, have not been entirely unknown. If the Legislature is to appear as a strong coordinate branch of government, it cannot paint a picture of itself as being incapable of overseeing the operation of its own members and of state government in general.

We believe that Section 1 of Assembly Concurrent Resolution 44 goes further towards achieving the goals we have outlined above, than does Senate Bill 320, which is in other ways better thought out and more comprehensive legislation.

Gentlemen, we believe that conflict of interest legislation is just one plank in needed reform of this Legislature. More legislative sessions, more staff, more office space, more committee activity and better fiscal research are all needed in New Jersey. We do not believe that the policy of rotating leadership strengthens the legislature in its effort to oversee state government. To just move in the area of conflict of interest is not enough, we believe. Positive action in these other areas will supply the Legislature with necessary resources to do the job of representation.

Thank you.

SENATOR MARAZITI: Any questions of this gentleman?

ASSEMBLYMAN COSTA: You say that we should meet more often, has your Institute given any consideration to increasing the compensation that they receive?

MR. CHARTOK: Yes, sir. We absolutely believe that is necessary.

ASSEMBLYMAN COSTA: Have you made a recommendation?

MR. CHARTOK: I don't believe there has been a recent recommendation but I believe that in line with our policy of the other states which we have done, which now number about 12, that there should be substantial increase in the rate of compensation.

ASSEMBLYMAN COSTA: And do you approve of the bill that they have in the State of New York?

MR. CHARTOK: The conflict of interest?

ASSEMBLYMAN COSTA: Conflicts of interest.

MR. CHARTOK: Well, I believe in the prohibition against representation by legislators before a state agency, yes.

SENATOR MARAZITI: Your position would be complete prohibition and not the elimination of the contingent fee that I talked about.

MR. CHARTOK: Yes, it would, except in the case - I do believe that there is a case to be made in terms of incorporation.

SENATOR MARAZITI: That would be an exception.

MR. CHARTOK: Yes.

ASSEMBLYMAN COSTA: How about the Inheritance Tax

Bureau? Would there be an exception there?

SENATOR MARAZITI: Did you hear the testimony where an attorney files an Inheritance Tax Report --

MR. CHARTOK: Yes, I did.

SENATOR MARAZITI: -- and it must be passed on by the Inheritance Tax Bureau.

MR. CHARTOK: I really have not thought out that area, but we had thought in our recommendations in New York that incorporations might be a good place to draw the line.

ASSEMBLYMAN COSTA: Thank you.

SENATOR MARAZITI: Have you looked at Senate Bill 320?

MR. CHARTOK: Yes, we have.

SENATOR MARAZITI: And what is your position on that?

MR. CHARTOK: We think it's a good bill except for --

SENATOR MARAZITI: That's all, next witness.

MR. CHARTOK: Except for this area of the Governor appointing the members of the commission, which we feel is a mistake.

SENATOR MARAZITI: You think the Senate should appoint them.

MR. CHARTOK: We think that the Legislature ought to, yes.

ASSEMBLYMAN COSTA: And you also think it should be bipartisan.

MR. CHARTOK: That's correct.

SENATOR MARAZITI: It should be determined by the Legislature and be bipartisan.

ASSEMBLYMAN POLICASTRO: No, the Governor too, the majority and minority in each House, as well as the Governor.

SENATOR MARAZITI: In other words, nominated by the Governor --

MR. CHARTOK: No, sir. You can have the leadership in each House appoint, the minority and majority --

SENATOR MARAZITI: And the Governor appoint one.

MR. CHARTOK: Right. And it might be necessary, of course, not to have a five-man commission.

SENATOR MARAZITI: Thank you very much.

Mr. Haines. You are Vice Chairman of the Conflicts of Interest Committee of the New Jersey State Bar Association.

MR. HAINES: Yes, I am, Senator.

SENATOR MARAZITI: Well thank you for appearing. Do you have a prepared statement?

MR. HAINES: I do not have a prepared statement, just a few notes that I will run through at random, if I may, and certainly feel free to interrupt me, as I'm sure you do.

SENATOR MARAZITI: All right, proceed.

M A R T I N L. H A I N E S: Thank you very much for inviting me to be with you.

You are dealing, of course, in this area, with morality and it's a difficult as well as a fascinating subject and one in which I think the people, and I might say particularly the young people today, are vitally interested in.

It seems to me, and this may seem like much too easy a statement, but it seems to me that the basic rules that you

should be laying down are relatively simple. They are the same rules that the 1957 Commission recommended to the Legislature, unfortunately without effect.

I think that Legislators should not appear for compensation, and I would define that term very broadly, before any state agency, bureau, body, what-have-you; nor should any Legislator appear in any proceeding to which the State is a party.

Now I would make some exceptions to that. I would say that such appearances are not to be prohibited in non-adversary situations; for example, in the Inheritance Tax Bureau, the filing of a routine inheritance tax return does not disturb me. I think, however, once a dispute arises concerning that return, then the Legislator must step aside and someone else must argue out that dispute.

I see no problem in filing a routine certificate of incorporation; and, again, it is only in the disputed area that we have a problem.

Now most lawyers certainly know that in connection with filing inheritance tax returns, certificates of incorporation, and what-have-you, that most of them are routine and that disputes do not arise normally.

I would also make practice by a Legislator before a court exempt, that is an exception, not prohibited. However, in cases such as condemnation where the State is a party, I would prohibit such appearances. Now whether it is necessary to do that by legislation is something for you to decide but I think it is impossible, particularly in

a condemnation case, to draw any rule between that phase of the case where one is negotiating and that phase of the case where one is litigating. The two are simply inseparable, as far as I am concerned.

SENATOR MARAZITI: Excuse me just a moment. In other words, so that I understand your position, you would prohibit negotiation in connection with the sale of land to the State.

MR. HAINES: I would go further, Senator.

SENATOR MARAZITI: I know. This is the first point. You would prohibit that and I understand that you would prohibit the appearance of the lawyer-legislator anywhere along the proceeding, in court or before a condemnation commission.

MR. HAINES: I think the lawyer-legislator, when he assumes public office, is expected, by the people, to make that sacrifice.

SENATOR MARAZITI: Well I'm not arguing with you. I want to get the point clear. In other words, you differ from the gentleman who testified a few moments ago, Mr. Bennett, in that you would prohibit the appearance of the attorney in court.

MR. HAINES: I'm not sure that we really differ in principle. I think Mr. Bennett, in effect, said the same thing but he's willing to let's try and see if the lawyer-legislator who is appearing can not simply litigate his case without getting involved in negotiations with the State.

SENATOR MARAZITI: Let's get it straight. You do differ with him. You do not allow appearance in court in

a condemnation case.

MR. HAINES: That's right. I go a step further.

SENATOR MARAZITI: I don't want to argue with you, I'm just trying to get your position clear.

MR. HAINES: All right.

SENATOR MARAZITI: And then you differ also with the 1957 Commission which would allow litigation appearances.

MR. HAINES: Yes, Senator, I do, with respect to matters in which the State is a party.

Now, of course, there are grey areas in this conflicts of interest business. It's really a never-never land. And in recognition of such areas, I think you must have an Ethics Committee, or call it what you will, which is going to handle cases on a case by case basis. I don't think that's impractical. I think we do it every day and I think it must be done.

Now, what I've said, of course, so far is nothing new, really. What I have suggested in the way of drawing a rather firm line in these areas, where to me the moral issue is clear, is something that the Federal Government said a very long time ago with respect to the members of Congress, and its law is very firm, very brief, and provides very stiff penalties - \$10,000 fine, loss of office, and ten years in prison.

I am not suggesting that harsh a penalty, when we come to that point, but what will be news in this area here will be if in fact the Legislature adopts strong rules and further if it adopts the machinery that can enforce the rules. This is where the problem comes.

I have a few suggestions about the enforcement area, about sanctions, which, as I suggest, I think is vital to the whole subject because you can say what you wish in the area but if it's not enforced what you have said is of no real value.

I think there ought to be fines provided. I'm not particularly concerned about the amount but I think there ought to be some fine. If a legislator, of course, is fined, the resultant publicity is the real punishment.

I also would provide for loss of office, as the Federal Government does. I would, however, direct some concern toward another area which, for some reason, has not been tackled in any legislation with which I am familiar, and that is the other side of the situation, the fellow who employs a legislator to appear for him before a State agency. Now, if he has employed the legislator - and this is the area in which we have concern, of course, if he has employed him, - because he thinks he can get more out of the conflicts of interest situation, if he thinks there is a matter of influence here.

SENATOR MARAZITI: What about the client who employs a good friend of the judge because he thinks he might be influenced. What would you do about this?

MR. HAINES: I think that there is perhaps a subtle influence there, but it's an area that I would not prohibit. I don't think you can prohibit that sort of a human relationship in this area, but it illustrates a grey area that --

SENATOR MARAZITI: What about the client who goes to

the firm of a retired Supreme Court Justice?

MR. HAINES: Exactly the same thing. There is no question he is --

SENATOR MARAZITI: He is influenced.

MR. HAINES: -- employing a person who is likely to be more impressive because of his background. But I think, again, that it's a line - you're going to put that on the side that's permitted. I don't think you can erase that sort of human conduct.

ASSEMBLYMAN GAVAN: May I ask one question?

SENATOR MARAZITI: Yes, Assemblyman.

ASSEMBLYMAN GAVAN: What about, say for example, a hypothetical case, - a man gets involved in stealing and you know people, they all get around, - he gets involved in stealing something and he goes into an office building and he sees this array of lawyers there and there happens to be a legislator who is a member of one of these particular firms and he goes in and hires one of the partners in the firm to represent him in this particular case - what is your feeling on something like that?

MR. HAINES: I think it's a very difficult area in which a legislator might operate, that is to handle a criminal case. And I think your case has two parts, one, should a legislator handle criminal matters, and my answer to that is no.

ASSEMBLYMAN GAVAN: I'm not saying a legislator, I'm saying he's a member of the law firm.

MR. HAINES: That's the second part of your question

and it goes to some of the former questions asked of Mr. Bennett, namely, should a partner be prohibited from appearing in matters in which the legislator may not appear. And my answer to that is, unequivocally, no, he should not be. And I am not willing to go as far as Mr. Bennett in suggesting that even though the legislator gets no compensation, though he does not share in that fee, that the partner should be permitted to participate. I think the answer to that is clearly no. It is the rule that has been laid down by the Supreme Court with reference to practice in municipal areas and in the county areas, and I cannot see, as a matter of principle that the rule should be any different at the State level; if anything, I thought it ought to be stronger.

ASSEMBLYMAN POLICASTRO: May I ask a question?

You would even bar a lawyer from appearing in a criminal case?

MR. HAINES: Yes, sir.

ASSEMBLYMAN POLICASTRO: In any criminal case?

MR. HAINES: Yes, sir.

SENATOR MARAZITI: Don't you think the judicial system is adequate protection against an improper procedure? There are questions of rulings, evidence, appeals, don't you think that's sufficient protection? Where is the conflict there in the judicial system?

MR. HAINES: The difficulty, of course, is the legislator is directly opposing an interest of the State, represented by the Prosecutor.

ASSEMBLYMAN GAVIN: Mr. Chairman, I would like to ask one more question. How about in the case where a man wants

to go for a variance or a zoning change, if someone wants to put a gas station on that corner and he goes into this law firm where a legislator might be a member of the law firm and, going in there, he figures it carries some weight. What is your feeling along matters of that type?

MR. HAINES: I think he has a possible conflict, as you do in all of these situations, but, here again, I would be inclined not to prohibit that because I think you are talking about something that's happening at the municipal level, not at the State level, and I think many times you can draw the line and permit a legislator to handle that kind of a situation.

SENATOR MARAZITI: On the question of prohibiting an attorney from appearing as defense counsel in a criminal case before the Superior Court, let's say, you say you would prohibit that because he is in a position against the State.

MR. HAINES: Yes, he is.

SENATOR MARAZITI: Now, therefore, why? You've got to give a reason. Is there a conflict of influence or what do you think happens in a case like that?

MR. HAINES: Well I think the difficulty is what the public thinks.

SENATOR MARAZITI: Well, what actually happens? What would the public think is wrong?

MR. HAINES: The public would think that the appointment of a prosecutor, for example, may be influenced by a legislator because the legislator, a Senator in any event, is consenting to the appointment.

SENATOR MARAZITI: Then would you prohibit a lawyer-legislator from trying a civil case in the Superior Court because he belongs to the Senate, let's say, that confirms the judge. Would you prohibit that too?

MR. HAINES: No, I would not.

SENATOR MARAZITI: Well, what about that? It's precisely the same situation there. If you apply it to criminal aspects why not apply it to civil aspects?

MR. HAINES: I think, first of all, in the criminal aspect he has a direct interest of the State involved, namely the interest and law enforcement, and it is the public that the Prosecutor is representing, it's not a private litigant. Whereas in civil litigations there are private litigants involved. This is quite a different matter.

SENATOR MARAZITI: But the private litigants, if you consider a conflict - the private litigant, if you carry your theory to a conclusion, would suffer; one of the litigants would suffer, would they not?

MR. HAINES: Oh, of course, but that litigant who suffers is not the State of New Jersey.

SENATOR MARAZITI: But if you are going to work for equality and justice, you want it to apply there too. Doesn't this fall into the realm of what Mr. Bennett was talking about, that you've got to be reasonable in approaching matters of this kind where, as Assemblyman Costa indicated here, you're not going to have a Utopia, you're not going to have that in life, you're dealing with practical realities and you're getting to an area where you

would then have to screen each attorney and see if he had supper with the judge the night before, or knows some member of the jury.

MR. HAINES: No, I'm willing to be practical and I think I am being practical, although you will think, because of the firm line that I am taking, that I am perhaps being naive. I'm saying what I would hope for in this area, and I'm saying what I believe. And in some of the areas, many of them you've touched, of course, I'm not expressing the attitude of the Bar Association because it has not had an opportunity.

SENATOR MARAZITI: Well may I ask you this. Mr. Haines, you are a member of this Committee, you are the Vice Chairman of the Conflicts of Interest Committee, New Jersey State Bar Association.

MR. HAINES: That's correct.

SENATOR MARAZITI: Mr. Bennett is the Chairman.

MR. HAINES: Yes, he is.

SENATOR MARAZITI: And I hold in my hand their report and I see that this report is approved by you, Martin L. Haines, signed by you.

MR. HAINES: That's right.

SENATOR MARAZITI: Well isn't your position the same as Mr. Bennett's position?

MR. HAINES: Not in all matters.

SENATOR MARAZITI: Well, you signed the report, you concur with the report.

MR. HAINES: I concur in the report.

SENATOR MARAZITI: And now you are testifying at variance to the report.

MR. HAINES: I think not, Senator. My testimony goes further than the report. The report is primarily historical. Except for its historical aspects, it concludes with a specific recommendation that some legislation be adopted here that is similar to the Federal legislation. And that's, as simply as possible, all that it says. Now we have gotten into a great many other areas. I think they are important areas. I think they are worth discussing. This kind of give and take is valuable.

I think - I don't want to interrupt if there are more questions.

ASSEMBLYMAN COSTA: The truth of the matter is that this report here is more or less a compromise amongst the members of your Committee.

MR. HAINES: I did not detect any area of compromise. I think the Committee is unanimous in the position that strong legislation is necessary.

ASSEMBLYMAN COSTA: Well, what I mean to say is that the Committee is unanimous in that they want a strong bill but there might have been members within the Committee, such as yourself, who would like to have gone farther than the Committee recommended.

MR. HAINES: No, I think even that is an unfair statement. I can only say - and I don't mean that you're being unfair, Mr. Costa, but rather that the Committee simply did not direct its attention, in connection with that report,

to those matters. I'm sure it will direct its attention and would be happy to take a position in any of these areas. But the report was designed to be general, to give a basic position without going into details that we're discussing here today.

SENATOR MARAZITI: This report, at the end, was unanimously approved by the undersigned - Bennett, Haines, Amster, and so on. By signing this report and not signing a supplemental report, don't you indicate that you concur with their position and they restrict representation by lawyer-legislators in certain fields and they don't restrict it in other fields - isn't that an admission on your part that you concur with that position, that you would permit the attorney to do what is not precluded by this report, unless you state otherwise?

MR. HAINES: Senator, I most certainly concur with the report completely but I think everything that I have said is not at variance with the report, it is simply an addition to it. There has been no opportunity for this Committee to prepare any supplemental report in time for this hearing.

SENATOR MARAZITI: The report is dated March 5.

All right, you may proceed.

MR. HAINES: You must remember, I'm not trying to take advantage of time limits, I wish we had more time, but not only did the Committee have to have several meetings at which the report was conceived and adopted, but in addition it had to be submitted to the Trustees at a regular meeting of the Trustees, and then to this hearing, so that some time was necessary.

ASSEMBLYMAN KEAN: I want to commend the Bar Association for its statement and hope that some of the questions which have been somewhat around the periphery - and I think the public is concerned not only about legislative ethics but about the ethics -- I'll put it this way. I hope the Bar Association, based on perhaps some of the questions here dealing with people who are not legislators but might unduly influence judicial opinions, - people from other areas, former legislators, county chairmen, people like that, these members of the Ethics Fitness Committee who practice before the judges whom they confirm, and there are other areas that I think the Bar might go into, which have been touched on here but I would hope that your Committee would further consider these.

All right, on the line of your statement - you heard the statement by the Eagleton Institute. Is there anything there that you disagree with. I thought it was an unusually clear statement. Is there anything there that you would take exception to?

MR. HAINES: Unfortunately, I couldn't hear the gentleman very well and I don't think I am really prepared to answer that question without reading his report. If there is something specific about it that you can call to my attention, I will be glad to comment.

ASSEMBLYMAN PARKER: Let's go a little further into areas of influence. This is what the public thinks. Do you think it is, for instance, - and I don't mean to be personal -

a problem for county chairmen of each political party to practice before these areas? Do you think a retired judge or a retired legislator should appear in these areas because of their particular influence? And this is what really is happening in many cases, isn't it?

MR. HAINES: Well, what we're talking about here, - of course there are conflicts and influence and that's what the public is concerned about and what this Committee is concerned about. Insofar as any person appears before any agency and through the exercise of influence achieves a certain result as opposed to gaining a result on merits, there's something wrong with it.

ASSEMBLYMAN COSTA: Well dealing with legislators and dealing with county chairmen is a little different.

MR. HAINES: Of course, it's different, but there may be some county chairmen who will wield exceptional influence over a particular agency. I don't know of any.

ASSEMBLYMAN COSTA: I know, but the people in a particular county, unless they're members of that particular party of which he's chairman, could do little, if anything, about it.

ASSEMBLYMAN PARKER: But just the opposite is also true, isn't it, Tom, where you have a county chairman who may be of the same party as the Governor or the party in power in this particular county?

ASSEMBLYMAN COSTA: I'll agree with you that there could be some conflict of interest on these but I think the people of the State of New Jersey are concerned with the

legislator who has been elected to an office of trust to watch out for their interest. If we could resolve that one matter this year or next year, we can worry about the other ones later.

ASSEMBLYMAN KEAN: Tom, what I am concerned about and I think what Barry is concerned about is not the subject of this hearing, perhaps it should be the subject of a future hearing, but I would suggest that the public is not fully confident in our many practices by the Bar in this State, not entirely through the fault of your Association at all, but there have been things which many people are aware of and I think perhaps your Committee ought to look into some of that criticism.

MR. HAINES: Well I think our Committee is concerned with conflicts of interest. I think the Bar Association, as a whole, is very much concerned with the ethics of all attorneys and is generally interested in all phases of that matter. And if you have anything specific that's troubling you, I would strongly urge you to communicate with me or the Trustees or the President of the Bar Association and I can assure you it will be given immediate attention.

ASSEMBLYMAN COSTA: Well I would recommend that you start to study the activities of the lobbyists in this State.

SENATOR MARAZITI: You know, talking about recommendations, in all these conflicts of interest statutes we talk about a statute dealing with the conduct of legislators, the legislative branch, we talk about a statute dealing with the conduct of officers in state government, and agencies and

department heads, and so on, but it just occurred to me the other day that there are three branches of government - the executive, the legislative and the judicial - and has the Bar Association ever considered any statute dealing with the judiciary, that is, ex-judges being in law firms and those law firms appearing before the associates of the former justices, and so on. I don't mean to be too specific except that it did occur to me, in reading all the past bills, that we're only dealing with the executive and legislative branches of government and I'm wondering if the judiciary is so splendidly conducted that there are no problems there. This is something that somebody could look into at some time.

MR. HAINES: Oh, I don't think we should hide our heads in the sand. As a matter of fact, the Supreme Court has adopted rules which are directed specifically at the problem you mention. I'm not prepared at the moment to recite the rules but there are rules directly concerning ex-judges.

SENATOR MARAZITI: But there are some people who feel there should not be a statute and, therefore, the legislature would do just as well by adopting rules in the Assembly and in the Senate to deal with the situation. This is what the judicial branch of government seems to be doing. This is just a thought I throw out, I don't say that I concur. I believe in a statute for three departments of government, including the judicial department. This is something to think about.

MR. HAINES: Senator, I'm not concerned about whether you pass legislation or how you do it, but that seems to be the way to do it. I am concerned about taking some action

which results in enforcement of the obvious rules. And whether that's done by rule or whether that's done by statute, it seems to me is immaterial. The problem gets back to enforcement.

SENATOR MARAZITI: Yes. Now one more thing. Has the Bar made any inquiry into the question of a legislator voting on a bill in which he has a direct financial interest and making disclosure of that? Has that study been undertaken by the Bar?

MR. HAINES: I don't think that we have dealt with that specifically at the present time. The conflict is obvious. The problem seems to be simply defining when that interest is so great that it affects the legislator's ability to vote in a disinterested way.

SENATOR MARAZITI: I see. Any further questions?

ASSEMBLYMAN POLICASTRO: Would this be a fair statement? You say that the Bar Association's recommendations - of course, this hasn't been adopted yet by the membership but your recommendations right now, which would be submitted, are, a lawyer-legislator can't go before any board of the State or in any adversary position to the State or practice criminal law. Would that be a fair statement? I mean, is that what you're saying?

MR. HAINES: Except for your comment about criminal law, I think that would be a fair statement as to the Association's position. The statement on criminal law was mine, personally.

ASSEMBLYMAN POLICASTRO: Your own personal statement?

MR. HAINES: Yes, sir.

ASSEMBLYMAN POLICASTRO: Then under your personal statement you are barring all those things. What else could a lawyer do? retire?

MR. HAINES: i think there are a great many things he can do. I do not know of any lawyer in this state, who is worth his salt and willing to work, who does not have a great deal more to do --

ASSEMBLYMAN POLICASTRO: For \$7500 a year?

MR. HAINES: -- who does not have a great deal more to do. No, sir, I'm talking about areas of practicing law - who does not have a great deal more to do than he can handle. And I don't think that barring him from these activities would necessarily affect his income in any substantial way but, if it does, I think the public expects him to suffer that consequence.

ASSEMBLYMAN GAVAN: Mr. Haines, would you have any feeling toward, or care to make any statements, say, for example, a man would serve say two, five, six or ten years in the Assembly or the Senate and then take a position as a lobbyist? Do you have any feelings toward that?

MR. HAINES: I haven't given that any real thought nor do I think that I have any expertise in the area of lobbyist. The inferences of your question are obvious, I suppose. Whether lobbying techniques are good or bad, I don't know. It's obviously a device aimed at promoting special interests. To that extent, it's unfortunate too.

ASSEMBLYMAN GAVAN: I have no further questions.

MR. HAINES: I would like to make just a couple of closing remarks, if I may, but I don't want to interrupt questions. You have been generous in your time already.

I was making a couple of suggestions about enforcement and I was about to say that I thought there ought to be some penalties that could be imposed against the person who employs a legislator to appear before a committee in an improper situation, not a committee but a state agency. And, for some reason, no one has ever directed any legislation or any sanction at that employer who certainly is in just as bad a moral position.

And finally, I think if you really want to enforce this, - and again you will consider me naive - but you would place some authority outside yourselves whereby some enforcement machinery could be placed in operation. For example, you might permit a recognized political party to enforce the provision as to loss of office if there is an improper appearance. In this way I think you would get some action.

Now, finally, our concern, of course, for the Bar Association, has been with lawyers who happen to be legislators. And, as you know, - I'm not sure Mr. Bennett emphasized it - we did request our Supreme Court's Ethics Committee to make a ruling in this area so that we would know where such lawyers stood, in the same manner as such rulings have been made by that very same Ethics Committee at the municipal and county levels. The Ethics Committee declined that request and, among other things, based its declination on the problem of the judicial and legislative branches in

effect confronting each other directly in that kind of a situation, although, of course, our position was that we were not out for rules involving legislators but only involving lawyers who happened to be legislators.

Now, in light of that circumstance, the fact that the ruling has not been handed down, I think there would be no problem in obtaining such a ruling if this Committee were to join in a request of the Bar Association for such a ruling from the Ethics Committee. This would remove the problem of one branch versus the other branch, and I would urge you to make such a request.

Now, finally, we find in this area, frequently, arguments that if we are going to be as tough as I have perhaps suggested, we are not going to attract some good men to the legislature. I think the argument is not valid. I think that if a legislator is attracted to this high office by reason of his opportunities to make money out of conflicts of interest situations, he's not a good legislator and you don't want him in the first place.

Now, if you don't act in this area, if the Legislature doesn't, it seems to me that it condemns all of its members to a situation where there is considerable uncertainty in an area of high moral concern. I think that that would be intolerable. I think the Legislature must act.

SENATOR MARAZITI: Thank you very much, Mr. Haines. We appreciate your appearance here.

Mrs. Joseph Palin.

Before proceeding with your testimony, I would like

to have the record show that Assemblyman Woodson, Vice Chairman of the Commission, is present, and Assemblyman Gavan.

Mrs. Palin, whom do you represent?

M R S. J O S E P H P A L I N: I am a member of the Board of Directors of the League of Women Voters of New Jersey. I am here on behalf of the League in answer to your request to us for testimony regarding conflicts of interest legislation.

SENATOR MARAZITI: What is your address?

MRS. PALIN: It's Linden, New Jersey.

SENATOR MARAZITI: Do you have a prepared statement?

MRS. PALIN: Yes, I do and I think it has been given to you. I gave them to Mr. Lee.

SENATOR MARAZITI: Thank you.

You may proceed at your convenience.

MRS. PALIN: I'm just sorry I am not a lawyer today.

The Leagues of New Jersey have just finished a two-year study of procedures in the State Legislature, including the present provisions for setting and maintaining high ethical standards, consistent with its obligations to the public. We have reached a consensus that the present conflicts of interest law is ineffective and needs strengthening. We have also agreed that the Legislature should enact a code of ethics with effective enforcement provisions.

We are concerned with three elements that are required in order to minimize the problem of conflicting interests in government:

- 1) there must be an effective law
- 2) legislators must be familiar with it
- 3) there must be strict enforcement of the law.

These may seem to be obvious points, but let us evaluate the present law using these criteria.

The present conflicts-of-interest law is ineffective because it does not bar legislators from undesirable activities (such as representing clients, whose interests are adverse to the state, before state agencies) -- it merely requires that they register such activity. This gives a legislator license to function in a manner which unfavorably reflects in the eyes of the public on the integrity of the entire Legislature.

Conflicts-of-interest of legislation should require the highest standards of ethical behavior.

Once an effective law is passed, the new legislators must be made familiar with it. A statement in a "Legislators" Handbook", which may or may not be read, is not sufficient. A better procedure would be to devote a part of the orientation session for new legislators to the explanation of the law and the need for maintaining the integrity of the legislative body.

Enforcement of a conflicts-of-interest law is notoriously difficult, much dependent on the clarity with which the law is written, the effectiveness and zeal of the enforcement agency, and the caliber of the legislators themselves. Enforcement of the present law has been haphazard. On the question of access to public record, the press was able to get information but representatives of the New Jersey Bar Association were denied information to which they were lawfully entitled.

Cynical disregard of the law by the legislators, and lack-lustre enforcement can result only in damage to the prestige of the Legislature as a whole and

contribute to an attitude of suspicion and distrust by the public. If the public cannot have confidence in the integrity of its law-making body it is unlikely to respect the laws it produces and thus the Legislature itself contributes to the decline of law and order.

The League recognizes that, with a part-time Legislature such as New Jersey's it is not reasonable to expect a legislator to divest himself of all outside interests. There are some instances, however, when his activities clearly should be banned. To protect the public interest a legislator should not:

- 1) act as a lobbyist for private interests while serving in the Legislature
- 2) have a financial interest in state contracts,
- 3) represent as a lawyer, or in other professional capacities, a client whose interests are adverse to the state before state agencies,
- 4) use or disclose information, gained as a legislator, for private gain for himself or others,
- 5) use his position to promote legislation for his personal gain.

As a first step, we believe that the present conflict-of-interest law should be strengthened, in line with the restrictions suggested above. Secondly, we recommend the adoption of a code of ethics. The purpose of a code of ethics, in our view, is to foster and maintain integrity in government, not only because it is desirable in itself, but because it makes public service more attractive to men and women of high caliber. If adopted, we suggest adding a statement to the legislators' present oath of office pledging compliance with the code of ethics. Extensive briefing on the provisions of the code of ethics should be conducted during orientation.

The Joint Commission on Ethical Standards set up under the present law might well be charged with setting up a code of ethics and standards of conduct to be adopted

by the whole Legislature. This Commission, or some similar bipartisan body, appointed by the Legislature, could consider complaints of unethical conduct, render advisory opinions to legislators on proposed courses of conduct, recommend future rules and legislation based on its experience in this area, and recommend to the appropriate house removal or censure of the legislators and legislative employees violating the rules.

This commission should consider, in drawing up a code or law, such matters as when or if a legislator should be disqualified from voting on a bill in which he has a personal or financial interest; whether membership on a particular committee ought to be prohibited to those legislators with financial or professional interests in the field of the committee's jurisdiction; and the extent to which public disclosure of income and financial interests should be required of legislators. This Commission should make annual reports to the Legislature and the public.

In addition, we feel that stringent lobbying controls are an essential accompaniment to laws in the area of conflicts-of-interest. Some states, California for instance, have passed codes of ethics for lobbyists as well as legislators.

The Council of State Governments has developed a model Code of Ethics, which is now in the process of being further refined by a committee of legislators from various states working under the auspices of the Council.

We should like to stress the importance of public participation in the process of developing these laws and codes and the necessity of public access to records and decisions made under any codes or laws adopted. We think that the Legislature's efforts in this field would be strengthened by provisions for an impartial public body to review its actions.

We commend you for holding the present hearings, and ask that hearings be held on any proposed legislation in this field.

The League of Women Voters of New Jersey appreciates the opportunity you have given us to make this statement. Thank you.

SENATOR MARAZITI: You say you have a copy of a suggested code?

MRS. PALIN: Yes, I do.

SENATOR MARAZITI: Could we borrow that?

MRS. PALIN: You may have it.

SENATOR MARAZITI: We will have it xeroxed so that we can send it to members of the Commission. Mr. Lee, would you take that, please.

This is a suggested code by whom?

MRS. PALIN: The Council of State Governments.

SENATOR MARAZITI: Does that code have a provision in there about the point you mentioned of a legislator disclosing direct financial interest?

MRS. PALIN: Yes.

SENATOR MARAZITI: And it has to do with his voting on it?

MRS. PALIN: Yes, it does.

SENATOR MARAZITI: You did use the terminology, "a direct personal or financial interest." I can understand what a direct financial interest would be and I do know in some of the suggested codes, and the Conflicts of Interest Commission of 1957 did recommend such a rule in a code - No member of the Senate shall vote on any legislation

in which he has a direct personal or financial interest - but one thing that does confuse me is "personal interest." I don't know what that might be. I think wording to that effect might cause difficulties. In other words, if I were in favor of a bill because it would be good law or a solution to a problem in my community, the Town of Boonton, I have a personal interest there. I am wondering if the problem isn't the problem of language. In other words, personal interest could be a very broad term. Financial interest is simple. I think that can be determined, direct financial interest.

MRS. PALIN: I think it would be personal gain.

SENATOR MARAZITI: Personal gain. Right. This is what it seems to be. The point seems to be direct personal gain.

MRS. PALIN: Yes.

SENATOR MARAZITI: Any questions of the witness?

We thank you very much for your appearance. We appreciate your time and suggestions.

MRS. PALIN: Thank you.

SENATOR MARAZITI: Clarence Ziegler. You are the Executive Director of the New Jersey Taxpayers Association.

MR. ZIEGLER: Yes, sir.

SENATOR MARAZITI: We appreciate your appearance and you may proceed at your convenience.

C L A R E N C E J. Z I E G L E R: My name is Clarence J. Ziegler. I am Executive Director of the New Jersey Taxpayers Association.

The task of reviewing the history of legislative efforts to enact conflict of interest legislation in New Jersey has already been most capably accomplished by the excellent "Report of the Conflict of Interests Committee of the New Jersey State Bar Association" dated March 5, 1969. However, we would like to point out respectfully to your Committee that the bill which is under consideration today, Senate No. 320, contains few changes from bills given earlier legislative consideration. In reviewing our historical files prior to formulation of this statement we discovered that Senate No. 320 (1969) is identical to Assembly No. 147 of 1959, with a single exception in section 7, and to numerous duplicate copies introduced in the nine intervening years.

We endorse the purpose of Senate No. 320, as we did its earlier counterpart Senate No. 1, of 1958. Today's hearing is one of the too infrequent public discussions on legislation of this type. We are glad to participate. We consider Senate No. 320 more acceptable than existing law -- Chapter 229, Laws of 1967 (N.J.S.A. 52:13D-1 to -11 incl.) in terms of its scope, but we wonder whether the extent of changes in the bill under consideration compared with the 1959 version reflects any awareness of the development of new thought and practices adopted by other states in this subject area during the decade.

Admittedly, we have not had opportunity to evaluate the effectiveness of Chapter 229, Laws of 1967. The fact that it is self-policing and limited in scope leads to our conclusion that Senate No. 320 is preferable. We would prefer to see the basic prohibitions set forth in Constitution and statute rather than left to rule and regulation.

In the absence of a comprehensive specific statute prohibiting legislators and public officers and employees from serving conflicting interests, the public has been denied an essential protection, while well-meaning public employees have been faced by uncertainty concerning existing practices and reticent to embark on new pathways.

Senate No. 320 does not cover all levels of government in New Jersey and on that point we shall comment further. We think improvements could be made in various sections, as we shall indicate subsequently, but we believe the bill deserves serious consideration as an alternative approach to clarifying and controlling conflicts of interest.

#### Administration of Act

A significant difference exists in the organization for administration of Senate No. 320 and that provided under existing conflicts law (Chapter 229, Laws of 1967). The self-policing aspect of present law to which we earlier alluded provides for --

1. an eight-member Joint Legislative Committee on Ethical Standards of legislators appointed by the Speaker and President to administer those parts of the law relating to legislators, and officers and employees of the legislative branch, and
2. a seven-member Executive Commission on Ethical Standards selected by the Governor from State officers and employees in the Executive Branch to administer provisions of the law applicable

to the Executive Branch. The law does not place it within any department of the Executive Branch.

Contrast these with the five-member Commission on Ethical Standards in Government placed in the Department of Law and Public Safety under Senate No. 320, with appointments by the Governor with Senate advice and consent and a prohibition against any member holding any other office, position or employment under the State or any political subdivision thereof or under the United States.

The Committees under existing law perform regulatory and disciplinary functions. They function as judges of violations, and render advisory opinions on facts. Senate No. 320 fixes responsibility for appropriate disciplinary action "by the State officer or agency having the power of removal or discipline." We favor the organization provided in Senate No. 320. The proposed Commission would have all public members, with no direct involvement in government, <sup>who</sup> should be able to bring a degree of impartiality not existent in the present Executive Commission.

#### Need for More Fundamental Prohibitions

We earlier stated that we would prefer to see some basic prohibitions relating to conflicts set forth in the Constitution. The New Jersey Constitution does not contain broad prohibitions against dual job holding and conflicts of interest. We recognize the difficulty legislators face in legislating against themselves. In the absence of Constitutional initiative in New Jersey, there is no practical way for public sentiment to be reflected in direct action. Accordingly, the statutory approach is the only method by

which any change can be expected to be made. The Judicial Branch through the rule making process has limited participation by its officers and employees in matters which it interprets as conflict of interest. The Judicial Branch has declined to go so far as to specifically define certain legislator-lawyer roles which many public citizens consider to be conflicting.

The Legislature acted by statute to authorize certain dual job holding situations which in the absence of specific enabling law, the Judiciary had determined under common law principles were in conflict. (See Chapter 173, Laws of 1962).

We believe the present philosophy of dual job holding has been a significant obstacle to enactment of legislation such as Senate No. 320.

The New Jersey Taxpayers Association considers that a comprehensive approach for governing conflicts of interest must start with a constitutional prohibition similar to the following:

"No person holding any office, employment or position under the United States or this State, or a political subdivision thereof,....may be a member of either House of the Legislature."

Constitution of the State of Michigan, Art. IV, Sec. 8.

The above prohibition is somewhat similar to provisions in other State Constitutions which in effect prohibit a person from holding more than one lucrative governmental office or employment at the same time.

If New Jersey has an opportunity to start fresh, this point might well be the beginning. Certainly in an urban State like New Jersey, which has some of the world's best minds and outstanding persons of ability, the scarcity of talent is not so great that the

demand can only be met by permitting an individual to hold elected or appointed positions on more than one governmental payroll.

Before presenting the more specific suggestions we wish to make on Senate Nol 320, these basic premises seem to us to be essential.

1. The moral code and ethical conduct of governmental officials and employees should set the tone for the society they serve.
2. While morals and ethics fundamentally remain a matter of individual conscience, voluntary acceptance of a position of public trust imposes an obligation on the individual to subscribe to a common standard of ethical procedures and practices that may circumscribe his activities more closely than those not engaged in public service.
3. The absence of written stipulations setting forth those common standards deprives both the public servant and the private citizen of a means to evaluate his adherence to approved procedures and practice.

The following changes are respectfully suggested:

Page 2, sec. 3, line 5 -- After the word "purchase" add "sale or exchange"

Opportunity for conflicts of interest exist not only in the purchase of real property but also in its sale or exchange. All of these possibilities should be covered.

In Sections 5 and 6 on page 3 there are limitations on corporate stock ownership of 10 per cent. We call to your attention that there are many companies in which 10 per cent of the stock ownership might represent a large or possibly the largest single stockholder; however, we have no constructive alternative to suggest at this time.

Page 5, sec. 9(d)(1), line 37 -- Eliminate the word "substantial".

A conflict of interest either exists or does not exist. Substantiality should not be its criterion.

Page 5, sec. 9(d)(2), line 40 -- Eliminate the word "unwarranted".

This word clouds the meaning with uncertainty.

Page 5, sec. 9(d)(3), lines 45 & 46 -- Eliminate the words "that might reasonably tend to conflict with the proper discharge of his official duties."

Again, conflict either does or does not exist and the section should not be tempered to permit a minimum of conflict, lest it develop eventually into wholesale disregard to the statute.

Page 5, sec. 9(d)(4), line 48 -- Eliminate all of the sentence beginning with the words "might reasonably tend to impair..." and insert has or may have any interest adverse to the exercise of his official duties.

The reasons stated above hold in this case also.

Page 6, sec. 9(d)(8) -- Eliminate this entire section.

There is danger that this section as now written will tend to qualify the entire statute. If public servants are to fulfill their trust there is no middle ground.

Page 7, sec. 10(d)(3), line 35 -- Change the ";" to a "." and add the sentence, No such opinions shall be a defense as to any alleged violation of this statute nor have the effect of a judicial decision.

Responsibility for ethical conduct should always rest ultimately upon the individual and while advisory opinions are desirable, no presumption of legitimacy of action should flow from the rendering of an advisory opinion before the fact.

Page 7, sec. 10(g), line 49 -- After the word "periodically" insert "and at least quarterly"

Periodic reporting at least at quarterly intervals is desirable (See following comment).

We have assumed that rules and regulations promulgated under Senate No. 320 would be subject to the procedures and practices set forth in the new Administrative Procedure Act (Chapter 410, Laws of 1969). If there is any doubt of the applicability of Chapter 410 to the bill under consideration, we urge that necessary amendments be made so that Chapter 410 will apply. The monthly "New Jersey Register" is logically the publication medium for codes of ethics as well as advisory opinions.

Thank you for the opportunity of appearing and presenting his statement.

SENATOR MARAZITI: Thank you. Do we have any questions of Mr. Ziegler?

ASSEMBLYMAN COSTA: Mr. Ziegler, on page three you say a legislator should not hold two governmental offices, that it wouldn't be right to hold more than one lucrative governmental positions. At the present time, I'm the Mayor of the Township of Teaneck, which is the largest town in Bergen County, for which I get \$1500. Would you say that \$1500 is a lucrative amount of money being received by the Mayor of that town?

MR. ZIEGLER: I think probably you ought to appeal to the voters, but I'm not sure.

ASSEMBLYMAN COSTA: Well, I mean, if Teaneck were on the Atlantic Ocean in a certain county he'd be getting about \$15,000. But I would just take an exception to that prohibition for this reason. I think that if more members of the Legislature had some experience as a Councilman or as a member of a board of education or as the mayor of a municipality, - I think they wouldn't be so apt to pass bills calling for the expenditure of money when they know they don't have the money to fulfil the purpose of the bill.

MR. ZIEGLER: I quite agree with you, sir. It's just a question of whether they should be doing the two things at the same time.

ASSEMBLYMAN COSTA: Well, I don't see where there's a conflict. I think that by being a mayor and also being a legislator it gives you a better insight as to what they are trying to do down in Trenton and what the people back home would like them to do. Coming in as a total stranger,

I think you get lost sometimes.

MR. ZIEGLER: That's an honest difference of opinion.

ASSEMBLYMAN COSTA: All right.

ASSEMBLYMAN POLICASTRO: May I ask you a question, Mr. Ziegler? You are from the New Jersey Taxpayers Association, right?

MR. ZIEGLER: Right.

So far nobody has mentioned - maybe I missed it but as far as whether we should be a full time legislature, being well paid, with staff, so that probably we could do a better job and maybe avoid all these things with respect to lawyer-legislators or architects or engineers. Otherwise, aren't you just going to limit the people who would run to be in the legislature?

MR. ZIEGLER: I think that's probably true.

ASSEMBLYMAN POLICASTRO: But nobody seems to bring that up. If we bring it up, of course we're probably blowing our own horn. But I guess something should be done on both sides.

MR. ZIEGLER: Right.

SENATOR MARAZITI: Any further questions?

Thank you very much, Mr. Ziegler. We appreciate your time and suggestions.

All right, Mr. Wright. What is your address?

H E N R Y W R I G H T: 53 Colfax Road, Springfield.

SENATOR MARAZITI: Thank you very much. Proceed.

MR. WRIGHT: My first point, gentlemen, is full disclosure, and I heard some mention of that earlier this

morning. By the way, I represent the New Jersey Public Action Committee.

SENATOR COFFEE: What's the name of that Committee?

MR. WRIGHT: New Jersey Public Action Committee.

SENATOR COFFEE: Will you identify that organization or group? Who are they? How many members? Do you have members from every county in the State? Where is your home office?

MR. WRIGHT: I would like to defer to the gentleman who is head of the Committee in the back of the room here.

MR. McALLISTER: We have 232 members in about 18 counties. And our address is P.O. Box 51, Chatham.

ASSEMBLYMAN COSTA: What's the purpose of your Committee? What's your objective?

MR. McALLISTER: The purpose of the Committee is full disclosure of corruption in our New Jersey courts and to correct the wrong that does go on in our New Jersey courts.

SENATOR MARAZITI: Just a moment, I suggest you do this. We will certainly give you an opportunity to testify. I know you are answering the gentleman's question, but I suggest that we proceed with the gentleman in the witness chair. Would you like to elaborate?

MR. WRIGHT: I don't know who asked the question, --

SENATOR COFFEE: I did.

MR. WRIGHT: -- but I'll be glad to give him all the information he wants later about the Committee. I'm here to testify.

SENATOR MARAZITI: Well, if the Senator wants the

information now, he has a right to have it, right now. If you can answer it, I want you to answer it; if you can't answer it, say you can't.

Senator, suppose you take it from there.

SENATOR COFFEE: I think we have the information we need.

ASSEMBLYMAN PARKER: I would just like to ask, is this a non-profit corporation or an association, and does this have any particular purpose?

MR. WRIGHT: Yes. The purpose is to focus public attention on issues in the State which are not getting enough attention, where there are cases of corruption and breaches of ethics.

ASSEMBLYMAN PARKER: Just answer my question. Are you a corporation of the State of New Jersey?

MR. WRIGHT: No, it's a non-profit association.

ASSEMBLYMAN PARKER: It's an association, not incorporated.

MR. WRIGHT: No.

ASSEMBLYMAN PARKER: And do you or any persons in the organization solicit funds from the public for this?

MR. WRIGHT: I'm a member of it, I don't know.

ASSEMBLYMAN PARKER: You don't have any official position?

MR. WRIGHT: I don't contribute any funds to it, no.

ASSEMBLYMAN PARKER: Do you have any official position?

MR. WRIGHT: I'm a member of it.

ASSEMBLYMAN PARKER: I know, you said that. Do you

have any official position?

MR. WRIGHT: I conduct some of the public relations.

ASSEMBLYMAN PARKER: You're the public relations man?

MR. WRIGHT: I conduct some of that, yes.

ASSEMBLYMAN PARKER: And are you paid for that, sir?

MR. WRIGHT: Oh, no.

SENATOR MARAZITI: Will you give us the gentleman's name?

MR. WRIGHT: Edward W. McAllister, U. S. Navy, retired, 30 year veteran.

SENATOR GIULIANO: Mr. Wright, before you proceed, Assemblyman Parker asked you a question but you didn't seem to give him the answer. He asked, did you solicit funds from the public.

MR. WRIGHT: No.

Now the question I have foremost is, what has happened to the right-to-know law, which Senator Case has been promoting in Washington?

SENATOR MARAZITI: Are you asking this question of the Commission or is this a rhetorical question? Are you going to answer that question?

MR. WRIGHT: It's a rhetorical question. I'm going to answer it.

SENATOR MARAZITI: Oh, all right, go ahead.

MR. WRIGHT: Now, in addition to coming to testify before the Committee - and I wrote letters to you saying I would only take ten minutes but, after hearing Mr. Bennett's nice presentation and Mr. Haines, one took an hour and a half

and the other a half hour, I got some ideas and I think I might have to expand on the time.

ASSEMBLYMAN POLICASTRO: How long do you think you will take?

MR. WRIGHT: Well, I'd like to go to lunch too but I have to get back to work.

ASSEMBLYMAN POLICASTRO: How long do you think it will take? I'm asking a simple question.

MR. WRIGHT: Probably a half hour.

ASSEMBLYMAN POLICASTRO: I move we adjourn for lunch.

MR. WRIGHT: Mr. Chairman, I made preparation to come here. I asked to be heard a long time, on the 19th of February.

SENATOR MARAZITI: Now how much time do you think it will take you?

ASSEMBLYMAN POLICASTRO: A half hour, he said.

SENATOR MARAZITI: I have a note here that says it will take about ten minutes, and I, for one, certainly want to listen to your testimony, the only thing is --

MR. WRIGHT: I can't come in the afternoon.

SENATOR MARAZITI: Suppose you do this, Mr. Wright? Suppose you go right ahead, as quickly as you can, and we will see how it turns out.

ASSEMBLYMAN POLICASTRO: If there is no action on my motion, I'll -

MR. WRIGHT: I don't know what's wrong with Mr. Policastro.

SENATOR MARAZITI: Can you possibly come back here

in twenty minutes? We will have a short break for lunch.

ASSEMBLYMAN COSTRA: Mr. Chairman. Can you limit your remarks to maybe ten minutes?

SENATOR MARAZITI: I know this gentleman, he can't.

ASSEMBLYMAN GAVAN: I second Mr. Policastro's motion.

MR. WRIGHT: Can you have another hearing in the morning, like these divorce and alimony hearings. Put my name on it, and --

SENATOR MARAZITI: Just a moment. We'll take care of things.

MR. WRIGHT: -- I'll be glad to come back.

SENATOR MARAZITI: There's a motion made and seconded. Now, before we take a vote on it, may I ask you this, Mr. Wright. I want to hear you and I want to hear you fully - a half hour or forty-five minutes, an hour or two hours, whatever it is, and anyone else. This is a public hearing and every one will be heard. Initially we had the impression it would take about ten minutes and then we thought we would have a break. Now I am suggesting that we have a short break for lunch, about 20 minutes. If we do that, would you be able to come back in 20 minutes?

MR. WRIGHT: Well, I expected the officials to come first. I'm not an official --

SENATOR MARAZITI: Can you come back in 20 minutes?

MR. WRIGHT: I can't do it today. I can come back in the morning of some other day.

ASSEMBLYMAN COSTA: Why don't we excuse this

gentleman and hear the other people that want to be heard, and if we have to have another hearing on another day, we will have another hearing.

MR. WRIGHT: It certainly would be appreciated because I am not just coming here to surprise you but I have written to the Chairman and told him the problem and I would be glad to come back in the morning, as I have done in other cases, with specific requests. I don't want to rush this and lose the point. By next week I can make a prepared statement for you, too. Could you please hold another hearing, gentlemen?

ASSEMBLYMAN POLICASTRO: May we have a vote on the motion, Mr. Chairman?

MR. WRIGHT: Let the people who can come this afternoon --

SENATOR MARAZITI: Would you hold your fire?

Now you represent to the Committee that you cannot come this afternoon and you would like to come to another hearing.

MR. WRIGHT: In the morning.

SENATOR MARAZITI: Now we don't know what the situation is going to be about other hearings, so Assemblyman Policastro has deferred so please make your remarks to the point and proceed now.

MR. WRIGHT: All right. Thank you, Assemblyman Policastro.

SENATOR MARAZITI: Just go ahead.

MR. WRIGHT: I took the day off to come here.

SENATOR MARAZITI: You're here. Will you proceed or

step down from the chair.

MR. WRIGHT: I don't get hollered at by Chairmen of other committees when I come here to testify and you didn't holler at me the last time I was here.

SENATOR MARAZITI: Mr. Wright, this entire Commission here has deferred to you, please proceed.

MR. WRIGHT: This looks like the pressure theory. You've got me all shook up now. I mean, it's 8 to 1. You're all hopping on me.

SENATOR MARAZITI: Please proceed, Mr. Wright.

MR. WRIGHT: I'm not a professional lawyer.

ASSEMBLYMAN COSTA: It is not 8 to 1. Now if you want to give up your position for a moment to collect your thoughts and have someone else heard and then come back, do that.

MR. WRIGHT: In other words, you're not going to have another morning meeting?

SENATOR MARAZITI: Just a minute. Proceed, Mr. Wright.

MR. WRIGHT: All right. I'm going to take these points the way that I see them here.

Due to the great conflict when a lawyer is elected, or appointed officials, he has a license to steal. Now, this doesn't mean that I'm accusing any lawyers of being thieves --

ASSEMBLYMAN POLICASTRO: What are you accusing them of?

MR. WRIGHT: Now, by law, a lawyer should be required to disassociate himself with the Bar Association, particularly when he's on a committee that's judging the judiciary, which

is also a member of the Bar Association. This is coming up right now in current business on the Judiciary Committee. They are all in the same club. Public office should be for a job to the citizens and not for the money end. It should be a full-time job. Legislators, I suggest, as Attorney General Sills, that we have a full-time legislature. This would take all the conflict out of it. And that it be a unicameral legislature.

ASSEMBLYMAN COSTA: Well what would you suggest paying them for being here full time?

MR. WRIGHT: I haven't worked that out yet. I'm paying the bill so I would have to think that over carefully, as a taxpayer.

ASSEMBLYMAN COSTA: No, but I think if people would think that out carefully before they made a remark, and had all the answers, we wouldn't have so many problems. You just can't go out and make a statement and stop.

MR. WRIGHT: Well, I'm trying to get to it.

Now, from the President right down to the dogcatcher, they should be above taint and suspicion and any profit on the side from being a legislator.

ASSEMBLYMAN POLICASTRO: Mr. Wright, let me ask you a question. You don't answer any questions as to what your organization is all about, you say you personally don't solicit funds, but you probably know that funds are being solicited for your organization to go along, but you hide those facts, and now you're accusing us of doing things. You are not disclosing things yourself.

MR. WRIGHT: I'm not hiding anything. I want to get on with the report.

ASSEMBLYMAN POLICASTRO: Well stop making those kind of statements. Will you please get on with the report. We are here to listen to ideas on conflicts of interest. Will you please get to the point. What have you got to suggest.

MR. WRIGHT: Well you may not be interpreting what I'm saying.

ASSEMBLYMAN POLICASTRO: Maybe I'm not but will you get down to the point and let us know what you have to say.

MR. WRIGHT: Maury K. Bloom in the Newark News --

ASSEMBLYMAN POLICASTRO: You take him.

MR. WRIGHT: Now you're afraid to listen. I think it's disgraceful when he says, "no really effective code of ethics governing legislators in any place." It's not possible in his book. I am just citing this, and I would like to get some more positive issues.

I would like to make a recommendation if you will listen, that New Jersey have a separate department of justice divorced from the Attorney General's Office - and I'm not picking on Sills; I'm talking about any future Attorney General - and it should not be run by lawyers.

SENATOR MARAZITI: Well, who should be Attorney General, an engineer?

MR. WRIGHT: No. The Attorney General should be separate but the Department of Criminal Justice should be divorced from this, a person selected by the Governor, the President of the Senate and the President of the Assembly, annually.

Then the type of things, where Sills had to discharge Hoffman from his particular committee there because Hoffman was supporting the Governor -- I'm not talking about money now, I'm talking about political -- certain political offices. Is this conflict of interest in --

ASSEMBLYMAN POLICASTRO: Would you tell me what that has to do with our meeting here today?

MR. WRIGHT: I'm talking about eliminating political influence.

ASSEMBLYMAN POLICASTRO: Will you answer the question?

MR. WRIGHT: Yes.

ASSEMBLYMAN POLICASTRO: What does that have to do with the purpose of this meeting?

MR. WRIGHT: This is an example of political influence. When a man is relieved from a committee because he supported a candidate who is his boss, against his boss. This is Meyner and Sills.

SENATOR MARAZITI: I am sure if you will allow him to testify, we will get the benefit of his --

MR. WRIGHT: And get it out of my system.

ASSEMBLYMAN POLICASTRO: Get the benefit of what?

SENATOR MARAZITI: Of his ideas.

MR. WRIGHT: Thank you, Mr. Chairman, you have been very fair.

SENATOR MARAZITI: Proceed, Mr. Wright. You have a right to be heard and I suggest that you proceed. If we will simply hold our fire until he has concluded.

MR. WRIGHT: That's the best way.

SENATOR MARAZITI: Yes, proceed. Hold your questions until he concludes his testimony.

MR. WRIGHT: If he wants to get his teeth in something, I brought along a copy of the Code of Ethics of Springfield, which is a pioneering code, and I pressed for this for years until we finally got it. And I would like to refer you to this as a code of ethics which provides a layman committee to investigate complaints and --

SENATOR MARAZITI: Is it drafted there?

MR. WRIGHT: Sure.

SENATOR MARAZITI: Fine. Will you take that and make copies for the Committee.

MR. WRIGHT: I have some notes, personal notes. Let me finish my testimony from my notes here. I don't have a prepared statement.

It also provides that penalties be given. And I agree with some of the Legislators now that any one who has had an allegation made against him, to the Committee, has the right to counsel and cross examination of those making the allegation. It should not be something where a particular individual can be crucified or ruined without recourse.

But this has to do with the local level and I think it's a very good one because it provides a layman committee and it also provides some penalties, specific penalties.

Now, the law states at this time only that a Legislator must file, and that's all he has to do, to practice before a governmental agency. That's all it says. The law should prohibit the practice of law while he is a

Legislator. It should be that strong, I think.

ASSEMBLYMAN PARKER: The whole practice of law?

MR. WRIGHT: His practice of law, right, while he is a Legislator. That's why I say full time legislation makes a lot of sense. This is a big state today.

ASSEMBLYMAN POLICASTRO: That's the best thing you said yet.

MR. WRIGHT: Right. It's getting as big as the nation. They have full time Legislators in Washington and they're getting paid a decent salary now, thanks to Nixon, and he's getting paid one. Why can't we have something similar in New Jersey?

Now, as I was saying, - this has to do with full disclosure - I came down here to get an official transcript of New Jersey against F. Lee Bailey, Esq., and to my surprise I was told that this was sealed by the Court. We can't get a transcript of the case which was, to me, a very interesting one.

Now, I was there. I have a recording device of my own and I want to compare that with the official transcript of what was taken in that case, but I can't do it. Why not? Why is that particular case sealed and why is that particular transcript not allowed to the public?

There was testimony taken in this Chamber about an ombudsman, with Senators Bateman and Woodcock, Senate No. 141, it was set up under. I tried to get copies of this testimony at my own expense. I can't get that either. How long does it take to get transcripts of the testimony before the committees? Can we get a transcript of the testimony before

this Committee?

SENATOR MARAZITI: Yes. When you get through, give your address to Mr. Lee and he will send you a transcript of your eloquent remarks.

MR. WRIGHT: Fine.

We also testified in front of the New Jersey Divorce and Alimony Laws Committee, and I have been trying to get a copy of that transcript too. What takes so long to get these things done? I don't know.

SENATOR MARAZITI: Lengthy testimony by witnesses.

MR. WRIGHT: All right. I'll try to cut it down.

Now, I would like to cite a request that I made today from the New Jersey State Claims Committee on a case that's been pending there for several years. It has been hidden under a blanket in there. It's a claim by Mr. McAllister.

SENATOR MARAZITI: I can help you here. Mr. Lee will give you the name and address of the Chairman of the Appropriations Committee and he will give you the name of the Chairman of the Claims Committee.

MR. WRIGHT: We have that.

SENATOR MARAZITI: Then I can get you to appear before that Committee because we can't help you in that regard.

MR. WRIGHT: I don't have a claim but if I can appear --

SENATOR MARAZITI: I am sure they will be very happy to hear you. Senator Robert Kay is the Chairman of the Appropriations Committee.

MR. WRIGHT: I thought it was Smith.

SENATOR MARAZITI: The man you want is Assemblyman Walter Smith. He'll take good care of you.

MR. WRIGHT: That's right. I want to see him because Mr. Kafes and Mr. Kurtz, his front men, won't let me get to talk to him.

ASSEMBLYMAN COSTA: Mr. Wright, are you a Rotarian?

MR. WRIGHT: Yes, I am

ASSEMBLYMAN COSTA: Do you know the four-way test?

MR. WRIGHT: Yes, I do. Is it the truth?

ASSEMBLYMAN COSTA: All right. Now we don't have time and what you're talking about is beyond the purpose for which this Committee was constituted. We are talking about conflict of interest and we are not talking about any claims.

MR. WRIGHT: Well this was just an example. All right. You have the point and I'll go on. It's about the only man in America that's not allowed to picket, Mr. McAllister. If you don't think that's the truth, check into it.

ASSEMBLYMAN POLICASTRO: What did you say?

MR. WRIGHT: He's the only man in America not allowed to picket.

ASSEMBLYMAN POLICASTRO: Who stopped him?

MR. WRIGHT: This court order by Judge Consodine in the Essex County Court House. You should look into that, you're in Essex County.

ASSEMBLYMAN POLICASTRO: Does he vote in Essex County?

MR. WRIGHT: No.

ASSEMBLYMAN POLICASTRO: Then let it go to his  
Legislator.

MR. WRIGHT: Well, anyway, that's maybe why his  
reappointment is being held up.

Now I also believe that the ethics of a Legislator  
should include reporting of crime, even if he is not a lawyer  
and automatically an officer of the court. All Legislators  
should be conferred the status of officer of the court, regard-  
less of profession, so that they can report crimes that are  
reported to them as officers of the court. This is ethics.  
And I've seen many Legislators that I've contacted about  
some crimes that are corroborated in the McAllister Case  
turn their heads, walk away, say I have to go, I don't know  
anything about it, refuse to receive mail that is sent to  
them in writing and affidavits. And if you gentlemen would  
each like to have a copy of some of these things, we will  
send them to you.

ASSEMBLYMAN POLICASTRO: Just give us what you have  
there on the Springfield Code of Ethics. That's what we're  
interested in.

MR. WRIGHT: Well, this is before Senator Bateman  
too, and the New Jersey Senate Judiciary Committee, and he's  
taking that up and he has promised to give some answers  
there which is very good. That has to do with the ethics  
of the Legislators. It's not just the money, it's covering  
anything up that is political in nature which might reflect  
on certain individuals in the judiciary of which he is a  
member of the Bar Association with the judge. Is he afraid

to expose a judge if the judge is not doing right. And I think this is something that should be--

ASSEMBLYMAN POLICASTRO: Who was he picketing?

MR. WRIGHT: Who was who picketing?

ASSEMBLYMAN POLICASTRO: Mr. McAllister.

MR. WRIGHT: He was picketing for his rights.

ASSEMBLYMAN POLICASTRO: Where was he picketing?

MR. WRIGHT: All over the State, all but one county.

We didn't get into Ocean County.

ASSEMBLYMAN POLICASTRO: And who made the application to stop him?

SENATOR MARAZITI: Gentlemen, do you want to eat lunch?

ASSEMBLYMAN POLICASTRO: No, now I'm interested.

MR. WRIGHT: It's all right there.

ASSEMBLYMAN POLICASTRO: I think I got this through the mail from you.

MR. WRIGHT: All right. Now, I had more to say but I can't cover it all because I know we all want to go to lunch and other people want to testify, and I appreciate the time you have given me.

I have this to conclude with, if I may, and I quote from The Freeman, Ideas on Liberty, which is published by the Foundation for Economics Education. It's the current issue, March, 1969, and I could get you a copy. It's on page 142.

SENATOR MARAZITI: Get a copy for Mr. Lee.

MR. WRIGHT: Education in America, and it's chapter 6, The Perpetual Adolescent. The point I want to get at is, and I'm starting with a sentence, and I think you'll

get it even though it doesn't make sense to start out.

"What that scribing has taught the western world is that the really valuable power in this universe is not the power over other men but the power over oneself. This power reflects not only knowledge but restraint; not only energy but will. To maintain standards means to develop the capacity to choose and reject; to have so disciplined one's attitude as to have established an ethical center uniquely oriented to self producing right conduct in the individual no matter what conduct the world around him might be."

SENATOR MARAZITI: That's a good paragraph.

ASSEMBLYMAN POLICASTRO: You know one thing you've convinced me of?

MR. WRIGHT: What?

ASSEMBLYMAN POLICASTRO: That we should have an ombudsman.

MR. WRIGHT: And I'll be glad to handle it. I'll be glad to dig into these areas at no cost.

SENATOR MARAZITI: The hearing is adjourned until two o'clock. No, we will go on. What is your name, please?

A G N E S H O R D E M A N: Agnes M. Hordeman of the New Jersey Federation of Republican Women's Clubs.

SENATOR MARAZITI: Thank you very much and we are sorry to keep you waiting so long. You take your time and go right ahead.

MRS. HORDEMAN: I'll be very brief, gentlemen.

SENATOR MARAZITI: You don't have to be brief. We want whatever you have to offer to us. Take your time and

proceed when you wish.

MRS. HORDEMAN: Well, if you wouldn't mind one personal observation on the hearing so far, I have been listening and, frankly, at the rate you're going you will eliminate all of the lawyers from ever being able to run for the Legislature.

SENATOR MARAZITI: Take all the time you want.

MRS. HORDEMAN: I also heard one of the gentlemen say that he felt there should be a declaration of total assets. Now, I am not a lawyer, I am a real estate agent, personally, and if I were to declare - to run for the Assembly or Senate and declare every asset in every individual I had to deal with, I'd lose my business. And the same could be said of a lawyer. After all, I thought a client was privileged information. And since when do they hand it out to everybody?

I think at this point everybody has been nitpicking. Instead of worrying about the bale of cotton they're sitting on, they're picking the lint.

Gentlemen, as a representative of the New Jersey State Federation, I would like to say that we are less interested in criticizing past performances and more intent in proposing that a businesslike code be established with a well-defined guideline, a guideline for the members of the Legislature as well as for the various State Department Heads whereby they can serve the best interest of the citizens of New Jersey and yet not jeopardize their business standing.

It would appear that a declaration of campaign contributions by business organizations or their representatives or trade group, would be in order. And I also would

include personal contributions, such as reimbursement, - let's take for an outside example, a contractor wants a piece of legislation put through and in exchange he builds a man's house, this would be a contribution.

Also, before seating a given committee, it would be wise to establish that the members having any direct business interest in the study to be made or the bill to be introduced be eliminated from that particular committee.

Now it seems that this whole problem came up in the first place, not through lawyers representing an individual and maybe getting a little bit here and a little bit there, extra, but from these same gentlemen being placed on a committee that drafts the very bills they are going to have to stand before courts and defend, or a client or prosecute a client.

In the case of a member of the legal profession, a designation that he represent a major client within that field, under examination, would be in order. These same legislators would be given ample opportunity or should be given ample opportunity to speak and air their views on the bill before the bill is presented for a vote.

Now I've heard a great deal today about influence. Since when is all influence adverse influence? Since when is it that a lawyer or an individual who represents an organization and presents a bill before the Senate or the Assembly - since when is his bill actually always adverse to the public? He could state that he represents a particular company, the company has come up with something that could

be to the public's benefit. If it would be presented in this light, if the guideline would be made in this light that he is working for a company but is presenting their viewpoint for the public interest, the public would know about it, the Legislature would know about it, and they could act on it with full knowledge.

The problem up to now has not been your declaration or the way you handle them, but you have not empowered anybody to exercise authority over it. In other words, if you found a conflict it looks like the Legislature was a little bit afraid to act on it for fear that they had to ostracize another Legislator.

Now at this point, I would like to read the resolution that the Republican State Women have drawn up. We are a member of a legislative study group. We presented this resolution to the Board and they have approved it. Our aim is not to come here to criticize you or to criticize the Legislature, but to offer our assistance in establishing a code of ethics, that is not so much to denigrate the Legislators, the lawyers, but to assist them. The resolution reads:

WHEREAS, Women's organizations traditionally have been concerned with ethics and morality at all levels of society, and

WHEREAS, the 1969 New Jersey Legislature has formed a twelve man commission to study the entire question of ethics and conflict of interest as it affects the activity of all legislators,

NOW, THEREFORE, BE IT RESOLVED, that the New Jersey Federation of Republican Women wishes to see the public confidence reinforced in our government and strongly supports the formation of the commission to examine the need for revising the "Conflicts of Interest Law" as established by Assembly Concurrent Resolution Number 44 and urges this Commission to make a meaningful report which can be implemented enunciating conflicts of interest and a stiff code of legislative ethics.

Now, as a layman and as a real estate agent, may I say there are only two fields that a lawyer is involved in that I am completely aware of. One is the condemnation. I can understand a Legislator who is also a lawyer not being allowed to handle condemnations and still be on the same committee. I can also understand it if he is a criminal lawyer.

Quite frankly, as a layman and as a citizen, I find that most of the citizens are irate over this one field, a criminal lawyer who is also involved in the Legislature. They do tend to conflict. It is very difficult to represent a criminal, as an attorney, and also to handle legislation. It sometimes gets a bit sticky, even though the man may be quite ethical.

Thank you.

SENATOR MARAZITI: Thank you very much. Are there any questions of this young lady?

Thank you very much. We appreciate your comments.

Next is Stephen Skillman. Thank you very much for

your patience, Mr. Skillman. You are a Deputy Attorney General, Mr. Skillman, are you not.

MR. SKILLMAN: Yes, sir, I am. I have a prepared statement, Senator, but I do not have extra copies.

SENATOR MARAZITI: All right. When you conclude with your memo, would you loan it to Mr. Lee and he will make copies for the Committee.

MR. SKILLMAN: Yes, I will.

SENATOR MARAZITI: All right, go right ahead.

S T E P H E N     S K I L L M A N: I am appearing here today, in response to a request from this Commission, to present the views of the Office of the Attorney General on the need and desirability of revising the New Jersey Conflicts of Interest Law.

As all of you know, the Office of the Attorney General is responsible for rendering legal assistance to the various agencies and departments of state government. Acting in this capacity, Deputy Attorneys General frequently appear before state agencies, as representatives of the state, in formal hearings and, in other phases of their work, come into daily contact with state agencies. Having the benefit of this perspective, we hope that our views may be of assistance to this Commission in dealing with the very difficult problem of conflicts of interest.

Discussion of any proposed conflicts of interest legislation must begin with the proposition that public service is a public trust. This means that the duties of public office are to be performed in furtherance of the public interest,

not to attain the private ends of public officials or those with whom they may be associated. However, the avoidance of actual improprieties by public officials is not enough; every effort also must be made to prevent appearances of conflict of interest which may tend to bring government into disrepute.

On the other hand, we fully appreciate that the total separation of public life from the pursuit of private enterprises is not practical and perhaps not even desirable. So long as there are part time public officials, such individuals will continue to obtain their main livelihood from sources other than government salaries, and it is inevitable, in an age when the operations of government are so pervasive, that the practice of certain professions will involve contacts with government. Furthermore, it is common, under our system of government, for persons to come into public service from private life and, after a period of service, to return to private life. Any conflicts of interest legislation must take this into consideration, or it will have the unfortunate effect of preventing capable individuals from entering public service.

It is apparent, therefore, that a balance must be struck between the legitimate interests of the part time public official or former public official in practicing his profession, and the highly important interest of state in preventing conflicts of interest situations which may bring government into disrepute.

We conclude that, in striking this balance, all reasonable doubts must be resolved in favor of the public interest in avoiding the possibility of undue influence or wrongful advantage.

It is with these basic principles in mind that the operations of the present "Conflicts of Interest Law" and the need for revision must be assessed. The current law, which, as you know, was enacted by chapter 229 of the Laws of 1967, is not adequate as a long term solution to conflicts of interest problems. Basically, this law does not contain prohibitions against public officials becoming involved in conflicts of interest situations. With respect to a state officer or employee, the present law provides, in substance, that he shall not engage in business activity with the state nor represent anyone for purpose of financial gain before a state agency, except with written permission from the head of the state agency in which he serves. Obviously, this prohibition is subject to the discretion of the head of each state agency, and is totally dependent upon the sensitivity of the individual agency head to conflicts problems. It also lends itself to unequal treatment from agency to agency. With respect to members of the legislature, the present law is even less restrictive, for it contains no direct prohibition against involvement in conflicts situations. All it requires is disclosure of involvement in conflicts situations, by means of written statements, to be filed with the clerk of the

General Assembly or the Secretary of the Senate. In our opinion, disclosure alone is insufficient; involvement in untenable conflicts of interest situations must be prohibited.

We believe, therefore, that the present "Conflicts of Interest Law" must be replaced by one which more adequately serves the purpose of preventing conduct by public officials which tends to violate their public trust. At a minimum, a more adequate law should seek to define those conflicts of interest situations which cannot be allowed.

Senate Bill No. 320 introduced this term does seek to define certain conflicts of interests situations which must be avoided by public officials; and in general approach, we feel the bill is a sound one. However, in at least one important respect the bill does not go far enough and in a number of other respects there is a need for some clarification. I would like to turn, therefore, to a discussion of the individual sections of Senate Bill No. 320.

Section 3 prohibits participation by members of the Legislature and officers and employees of a state agency from participating for compensation in negotiations with the state for the purchase by the state of interests in real property, or from participating in proceedings before a condemnation commission. We endorse this section of the bill.

The next section of the bill, section 4, deals with appearances by state officials for compensation before state agencies. The prohibition against such appearances is limited, however, to those involving contingent fee arrangements. In our opinion, this is not adequate. The possibility of undue influence or wrongful advantage is not limited to those situations where compensation is payable on a contingent fee basis; a public official's reputation for being able to obtain favorable results before state agencies may provide an ample incentive for improper action. And even absent an express contingent fee arrangement, higher professional fees may be justified where the desired agency action has been obtained. Furthermore, the unfavorable impression in the public mind from involvement of public officials in conflict of interest situations is unaffected by whether or not compensation for the services happens to be arranged on a contingent fee basis.

It is our opinion, therefore, that a revised "New Jersey Conflicts of Interest" law should contain an express prohibition against officers or employees of state agencies and members of the legislature appearing before state agencies, which is not limited to cases involving contingent fee arrangements. Such a provision need not prohibit all contact between state officials,

acting in a private capacity, and state agencies. For example, we do not feel it would be reasonable to prohibit a legislator or other public official from filing tax returns with the state. On the other hand, the situation becomes quite different when a contest as to tax liability arises; the "Conflicts of Interest Law" should prohibit any participation by a public official in such a dispute.

Although the definition of improper conflicts of interest situations in appearances before state agencies admittedly raise difficult questions of degree and judgment, it is our firm opinion that the "New Jersey Conflicts of Interest" law should be amended to contain a general prohibition against appearances before state agencies by members of the legislature as well as officers and employees of state agencies. We therefore respectfully suggest that section 4 of Senate Bill 320 be strengthened in this regard.

The following section, section 5, of Senate Bill 320 prohibits any state official from acting as an agent for the state in the transaction of any business with himself or with any firm in which he has an interest. We are in agreement with this prohibition and we endorse it.

We are also essentially in accord with section 6, the purpose of which is to prohibit members of the Legislature, state employees and state appointees from entering into contracts with the state, except pursuant to public bidding. There is one feature of this section, however, which we believe should be subject to further consideration. By its terms, section 6 prohibits a public official not only from "undertaking" or "executing" a contract which has not been subject to competitive bidding, but also from "holding" or "enjoying" such a contract. It thus very well might be construed to apply to contracts which an individual made before becoming a public official, but continued to hold after that date. In our opinion, section 6 should be amended so as to exclude this situation from its coverage. We feel that a public official should not be forced to cancel or transfer contract obligations undertaken before assuming office. First of all, this may be difficult in some instances. Second, there is a significant difference, in terms of possible conflict of interest, between continuing to enjoy the benefits of a contract executed prior to assuming public office, and executing a contract, without competitive bidding, while a public official. Finally, any dangers which might exist from allowing public officials to continue enjoying

the benefits of a contract made before assuming office, could be adequately dealt with by requiring full disclosure of such interests. Accordingly, we respectfully suggest that the words "hold or enjoy" be deleted from section 6 of the bill.

We are in agreement with section 7 of Senate Bill 320, which prohibits any member of a state agency, or any firm with which he is associated, from receiving compensation for any service before that agency or the department in which the agency functions. We perceive no reason, however, for the exemption of part-time officers, employees or appointees in the Transfer Inheritance Tax Bureau from this prohibition. Therefore, unless there is some special justification for it which has not been brought to our attention, we believe this exemption should be deleted.

The final provision in the bill, containing specific prohibitions against involvement in Conflicts of Interest situations, is section 8, which prohibits a former state official from receiving compensation for services in connection with any matter he handled or worked upon while in public service. We are generally in agreement with this section, and, in fact, see no good reason to limit its application to only two years following termination of service with the state. On the other hand, we feel a provision should be added, to indicate clearly that

this section is not intended generally to prohibit a former state official from appearing before the agency in which he served, so long as his appearance is not related to a specific case or matter in which he was involved while with the state; in this regard, a more precise definition of the word "matter" might be helpful. In the case of former employees in the classified civil service or long-term employees in the unclassified service,<sup>a</sup> temporary absolute bar from practicing before the employing agency might be justified on the grounds of possible undue influence. However, in the case of short term employees or officers, the possibility of such undue influence is relatively slight, so we feel that, in general, they should be allowed to practice before the agency in which they have previously served.

In addition to the specific prohibitions against involvement in conflicts situations found in section 3 through 8 of Senate Bill 320, section 9 provides for the promulgation of a code of ethics by the head of each state agency to govern and guide the officers and employees of that agency. Since the duties performed by the various state agencies differ greatly, this provision will allow each individual agency to set rules of conduct specifically tailored to its unique problems. Furthermore, it imposes a certain responsibility upon the heads of the individual agencies to establish necessary ethical standards. We therefore endorse the basic principle of section 9.

However, we think that the role of the Attorney General under section 9(b) should be clarified. In its present form, this section provides, first, that any proposed Code of Ethics must be approved by the Commission on Ethical Standards in Governments and, second, that when a code is submitted 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." This section could be read to impose a duty <sup>upon</sup> of the Attorney General to consider the wisdom of each code of ethics, and thus to substitute his individual judgment as <sup>to</sup> their sufficiency for that of the individual agency heads. We think that the role of the Attorney General should be limited to the expression of a legal opinion as to the sufficiency of a given Code under the United States and New Jersey Constitutions and the statutory laws of New Jersey, including the Conflicts of Interest law.

We further recommend, in connection with section 9, that it contain a clear indication as to whether the promulgation of codes of ethics shall be subject to the Administrative Procedure Act recently enacted by the New Jersey legislature.

Senate Bill 320 provides, finally, for the establishment of a Commission on Ethical Standards in Government in the Department of Law and Public Safety. We find this section to be

technically satisfactory and we endorse it.

In conclusion, I would like to thank the Commission for inviting the Office of the Attorney General to express its views on this very difficult and important problem, and I hope that this statement has been of some assistance to you.

SENATOR MARAZITI: Let me say this, and I am certain I speak for the Commission too, let me compliment you on a very excellent analysis and it shows a tremendous amount of effort and time on your part and I certainly have been impressed.

I would like to make one observation. I think you did, inferentially, ask the question - and this is in reference to section 7 when we exempt part-time employees of the Transfer Inheritance Tax Bureau. I am familiar with this addition to the bill. It is an addition to the bill as recommended by the Conflicts Commission of 1957. It wasn't in there. It was eliminated and the Commission report of '57 would concur with your position, it shouldn't be in there.

This particular section was developed because over a period of years we received a position from the Inheritance Tax Supervisors in each County, and many of them are lawyers, I believe most of them are, they are part-time employees of the Transfer Inheritance Tax Bureau and their position was this, that they would be prohibited from representing any estate, any decedent estates because those estates would have to be cleared through the Transfer Inheritance Tax Bureau. And a suggestion was made that this language be put in to exempt them but, at the same time, they would be subject - and the last phrase includes that, subject to the provisions of a code of

regulation adopted by the Bureau. And I understand that the Transfer Inheritance Tax Bureau, under Director Kingsley, does have such a list of regulations where the returns filed by these supervisors in their home county for their own estates could not be checked by themselves but would be checked by another group in this department. Now, perhaps that should be strengthened, or it could be eliminated and they could be prohibited from representing the State.

That is the history of that section and I do think it calls for a re-evaluation. But protection was built into the structure by requiring that they be subject to a code of regulations promulgated by the Department in which they work, and this code is in existence now, even without this bill, and they are not allowed to process their own returns.

ASSEMBLYMAN POLICASTRO: Mr. Chairman, may I ask you a question?

SENATOR MARAZITI: Certainly.

ASSEMBLYMAN POLICASTRO: You were in the Assembly here, didn't we pass this several times --

SENATOR MARAZITI: Yes. You voted for it and I voted for it.

ASSEMBLYMAN POLICASTRO: We passed it here and it went over to the Senate. A couple of years we passed that.

SENATOR MARAZITI: That's right. This bill did pass a number of times in the Assembly, it had trouble in the Senate, but now maybe we won't have any trouble in the Senate. But this provision was in the bill when it was passed. I think it should be subject to review but I wanted to explain to you

why we had it and we tried to build in some protection.

MR. SKILLMAN: I think that often a section like this appears quite different when the explanation for its presence goes along with the bill.

SENATOR MARAZITI: I'm not saying it shouldn't go out but when we were trying to take care of that situation it seemed reasonable.

Thank you again for your very fine analysis.

Are there any more witnesses to appear before the Commission?

Before we adjourn the Commission meeting, I have here a statement by Assemblyman William E. Schluter that we will make a part of the record. (See p. 144)

The Commission meeting is adjourned.

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REPORT OF CONFLICT OF INTERESTS COMMITTEE  
OF THE  
NEW JERSEY STATE BAR ASSOCIATION

In February of this year the Senate and Assembly of New Jersey adopted Assembly Concurrent Resolution No. 44 to "establish a study commission to examine the need for revising the 'New Jersey Conflicts of Interest Law' and the need for a code of ethics for State employees and legislators." This resolution created a twelve member bipartisan commission to be selected from members of the Senate and General Assembly and directed that the commission report its findings, conclusions and recommendations to the Legislature on or before April 1, 1969.

In view of this resolution and of the current widespread public interest in the subject of "Conflicts" it is the opinion of this Committee that it can render useful service to the Legislative Commission established by the concurrent resolution and to the public at large by reviewing and commenting on prior efforts by the New Jersey Legislature, the New Jersey State Bar Association and other interested persons and groups to deal with the problem of "Conflicts" with respect to legislators and other public officials and employees in the State of New Jersey, and we therefore respectfully present to the Trustees of the State Bar Association the following

review and report.

It will become obvious that this review and report is concerned primarily with "Conflicts" involving legislators and other State officers and employees who are members of the New Jersey bar. This is so because we believe that the problem is presented in its most difficult and acute form in situations where lawyer-legislators, State officers or employees practice their profession for compensation before State Agencies representing clients asserting claims against the State or on behalf of clients who are charged with criminal or civil liability by the State or who have other interests adverse to the State. If this review and report appears to be primarily concerned with our brothers at the bar who are legislators, State offices or employees, we do not mean to suggest or imply that the "Conflicts" problem does not exist also with respect to legislators and State officers and employees who are not members of the legal profession.

The existence of this problem has been recognized in New Jersey for many years and numerous persons and organizations both in and out of the Legislature have made efforts to solve it.

In 1942 Governor Edison commissioned the Honorable Roger Hinds to conduct an investigation of alleged irregularities in the New Jersey State Highway Department. After a thorough

investigation, in which he was assisted by Sidney Goldmann, now Superior Court Judge Goldmann, and Thomas J. Graves, who had been associated with the New Jersey State Chamber of Commerce, Mr. Hinds filed a voluminous Report in which he found that, in condemnation proceedings in the State Highway Department, "owners represented by members of the Legislature, former legislators, or attorneys identified with politics," obtained prices substantially in excess of the price of the Department's appraisals, whereas owners who were not so represented obtained a price reasonably in line with departmental appraisals. The Report includes the following recommendation:

"The investigation into the affairs of the State Highway Department, particularly in connection with real estate acquisitions, indicates the need of regulating the activities of legislators and other persons where the business of the Department is concerned. It is, therefore, recommended that legislation be enacted providing that no member of the Legislature should during his term of office, and no officer or employee of the Highway Department should either during his employment or within two years thereafter, act as agent or attorney, either with or without compensation, with respect to the voluntary settlement of any claim against or the negotiation of any agreement or other transaction with, the Department, or intercede or participate in any such settlement or negotiation."

This report and recommendation was published and caused widespread criticism of the practices disclosed, but did not produce any legislation nor did it apparently cause any change in the practices criticized.

More than ten years later, in 1955, at the request of Governor Meyner, there was another investigation into the right-of-way acquisition procedures of the New Jersey Highway Department. As the result of this investigation, Special Attorney General Richard L. Amster submitted to the Attorney General in 1955 a detailed report and recommendation calling for effective legislation to prevent members of the Legislature and other State officers and employees from representing interests conflicting with those of the State. Included in the recommendation was the following:

"The preparation and introduction of legislation similar to 18 U.S.C.A., Sec. 281, prohibiting New Jersey legislators and other officials of the State government from acting for gain in matters in which the State has an interest."

Again, however, no legislative action was taken.

Thereafter, in 1956, a Conflict of Interest Committee was appointed by the President of the State Bar Association "to study the conflicts which arise for the members of the Legislature who also represent those whose interests are adverse to the State." This Committee, with James D. Carpenter, a former President of the Association, as Chairman, submitted a report and recommendation which was approved by the members at large, with only one dissenting vote, at the 1956 Mid-Winter Meeting of the Association. This report and recommendation discussed the "Conflicts" problem in detail and proposed specific corrective legislation.

In 1956 and again in 1957 the Senate and the Assembly adopted Concurrent Resolutions appointing a "Legislative Commission on Conflicts of Interest" consisting of one Senator, one Assemblyman and three citizens of the State appointed jointly by the President of the Senate and the Speaker of the Assembly. The Commission was organized in August of 1957 with Senator James F. Murray, Jr. as Chairman. The Commission after engaging John H. Yauch, Jr., a former President of the State Bar Association, as counsel, and Daniel A. Degnan, Esq., as associate counsel, conducted public hearings at Trenton in September and October, 1957, at which many distinguished citizens testified individually and as representatives of organizations, including the State Bar Association and major departments of the State government. The Commission also collected information on the "Conflicts" problem from many sources, examined Federal laws, the laws of other States, decisions of the Courts of New Jersey, and consulted with experts in the field. The end result of this effort was the submission to the Senate and General Assembly of New Jersey in January, 1968 of a Report dated December 31, 1957, in which, after reviewing the nature and scope of its work, the Commission made the following recommendations:

## 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.

The Report included, and recommended for adoption, the text of a proposed statute giving effect to its recommendations, and the text of a proposed supplement to the Rules of the Senate and General Assembly establishing (a) a Code of Ethics and (b) a Committee on Ethics and Guidance.

These recommendations were approved and endorsed by the State Bar Association but, unfortunately, have never been accepted by the Legislature. The specific legislation recommended by the Commission was introduced in the Legislature early in 1958 but was killed in committee.

In 1959, however, a Bill known as Assembly No. 147 passed the Assembly by unanimous vote. While this Bill was not as strong as the Bill proposed by the Joint Legislative Commission in 1958 it represented a giant step forward and was approved by the State Bar Association. The Association then mailed to all New Jersey legislators and candidates for the office of Senate and Assembly in the Primary and General Election of 1959 a questionnaire concerning the attitude of the legislators and candidates with respect to "Conflicts of Interest." Specifically, each Senator and each candidate for the Senate was asked whether he would vote in favor of the Conflict of Interests Bill known as Assembly Bill No. 147. In response to this questionnaire and specifically in response to the last mentioned question, substantial support of this Bill was indicated. Nevertheless, following the election, it

was impossible to obtain a majority vote for the Bill in the Senate. Although so-called "Conflicts" Bills were introduced in the Legislature each year thereafter, none was enacted until almost ten years later in 1967\* when the Legislature approved and the Governor signed an Act (R.S.52:13D-1) which is vitally different from the statutes which were endorsed by the State Bar Association in 1958 and 1959. The vital difference between the 1958 and 1959 statutes and the statute adopted almost ten years later is that the 1967 law does not prohibit or even condemn "Conflicts" involving members of the Legislature, or State officers, or State employees. It is true that the 1967 law provides that"

"No State officer or employee or member of the Legislature shall accept from any person any gift, favor or service having value which is offered him with intent to influence him in the performance of his duties and responsibilities."

This provision, of course, simply repeats the obvious and accepted rule that members of the Legislature, State officers and employees may not accept bribes. The evil with which the State Bar Association has

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\* In the interest of literal accuracy reference should be made to Chapter 173 of the Laws of 1962, which dealt with the subject of conflicts but which can hardly be said to curb or condemn them. The purpose and effect of the Act was to authorize the simultaneous holding of an elected county office and an elected municipal office and also to authorize a member of the State Legislature to hold, simultaneously, any elected office or position with municipal or county government. Presumably such practices were questionable prior to this legislation. In any event, it appears that the effect of the legislation was to legitimize dual positions which were the subject of a pending taxpayer's suit. See Ahto v. Weaver, 39 N.J. 418

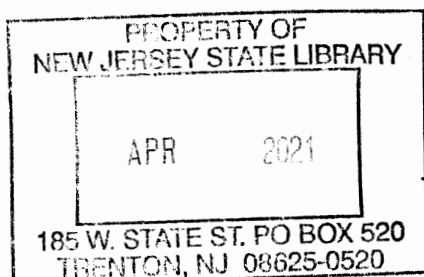
been and is concerned is much more subtle in nature than the outright taking of bribes and has not, in our opinion, been adequately dealt with in the 1967 Act which further provides in a subsequent section that:

"No State officer or employee shall engage in any business activity with the State of New Jersey or shall represent, directly or indirectly, for purpose of financial gain, any person before any State Agency, unless he has applied to the head of his State agency and received a written statement or permission to engage in such activity or representation."

and that

"No member of the Legislature shall engage in any business activity with the State of New Jersey or shall represent, directly or indirectly, for purposes of financial gain, any person before any State agency unless he shall have first filed with the Clerk of the General Assembly or the Secretary of the Senate, as the case may be, a written statement of such business activity or representation, setting forth the name of the State agency, the name and address of the business or person represented and the nature of the activity before the State agency and his connection therewith. Such a statement shall be a public record."

It is obvious that the section of this statute pertaining to the representation for gain of clients before State agencies does not prohibit or even condemn such practice but merely requires a State office or employee to obtain permission from the head of his State Agency to engage in the practice. In the case of a member of the Legislature, however, the Act does not require any kind of approval or permission but merely requires that a statement of the business activity or repre-



sentation be filed with the Clerk of the General Assembly or the Secretary of the Senate, as the case may be. Although such statements become a "public record" there is no provision in the statute for publishing the statements and presumably no effective publicity is intended. Indeed, the Clerk of the Assembly recently refused to permit a member of the New Jersey Bar, acting for this Committee, to examine the statements filed with him, on the ground that the examination might be prejudicial to some Assemblymen. We therefore cannot state with certainty how many such statements have been filed by Assemblymen. A recent count shows that in 1968 and thus far in 1969, 31 such statements have been filed with the Secretary of the Senate by 15 Senators.

In the opinion of this Committee the provisions of the 1967 Act are not only ineffective and inadequate to correct the evils of "Conflicts" but may well have the effect of promoting rather than discouraging improper practices by implying that after a member of the Legislature has filed the required statement of business activity or representation he may then, with complete impunity and without other restriction or limitation on his conduct, appear before State Agencies to represent interests adverse to those of the State. It seems obvious that the only way a member of the Legislature could violate the 1967 Act would be to fail to file the required written statement.

In recent years the Courts of New Jersey and the New Jersey Supreme Court's Advisory Committee on Professional Ethics have handed down a number of opinions dealing with specific "Conflicts" problems at the municipal and county level and con-

demning as improper, at those levels, practices similar to those which have been questioned at the State level. In view of these opinions the Trustees of the State Bar Association in 1967 requested this Committee to consider and advise whether under the rules and regulations of the Supreme Court's Advisory Committee an effective application could be made to that Committee by the Trustees for an advisory opinion concerning the extent, under the Canons of Professional Ethics, to which attorneys who are members of the Legislature may properly practice for compensation before State Agencies on behalf of clients having claims or interests adverse to the State. After having studied Supreme Court Rule 1:26A this Committee advised the Trustees that such inquiry could properly be made by the Trustees to the Supreme Court's Advisory Committee. This Committee thereupon framed and submitted to the Trustees a set of questions designed to elicit an appropriate advisory opinion of the Supreme Court's Advisory Committee and also submitted to the Trustees for submission to the Advisory Committee a detailed memorandum citing pertinent provisions of the Canons of Professional Ethics and other authorities relevant to the propriety of the practice of lawyer-legislators and lawyer-State officers and employees before State Agencies. The questions and memorandum were then submitted by the Trustees to the Supreme Court's Advisory Committee. The questions were as follows:

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INQUIRY

Under what circumstances is it ethically improper and a violation of the Canons of Professional Ethics for an attorney who is a member of the Senate or the General Assembly of the State of New Jersey, to directly or indirectly appear before or negotiate with a State Agency, Department, Division, Board, Commission, Authority, Bureau, Condemnation Commission, or other similar instrumentality of the State of New Jersey, whether with or without compensation, in relation to any cause, proceeding, application, or other matter involving any award, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, claim or other benefit, on behalf of a private client?

More particularly, is it ethically proper under the Canons of Professional Ethics for an attorney who is a member of the Senate or the General Assembly of the State of New Jersey, to directly or indirectly appear before or negotiate with any of the following state agencies or departments or divisions thereof whether with or without compensation on behalf of a private client:

- (a) Department of Banking and Insurance
- (b) Department of Public Utilities
- (c) Department of Civil Service
- (d) Department of Law and Public Safety

- (e) Department of the Treasury
- (f) Department of Agriculture
- (g) Department of Institutions and Agencies
- (h) Department of Labor and Industry
- (i) Department of Conservation and Economic Development
- (j) North Jersey District Water Supply Commission
- (k) Passaic Valley Sewerage Commission
- (l) Condemnation Commission

Is there a distinction between:

- (1) Proceedings which are adversary in nature before such agencies between private litigants both of whom are represented.
- (2) Proceedings which are adversary in nature before such agencies between a private litigant and the State, in which both parties are represented.
- (3) Proceedings which are non-adversary before or with such agencies.

In the memorandum transmitted by the Trustees to the Supreme Court's Advisory Committee reference was made to the fact that the Federal Government had long ago recognized and dealt with the "Conflicts" problem by adopting 18 U.S.C.A. §203 which prohibits any member of the United States Congress from receiving any compensation for any service to be rendered by himself or another

". . . in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct or substantial interest, before any department, agency, court martial, officer, or any civil military or naval commission. . ." \*

The Report also cited the decision of the United States Supreme Court in Burton v. United States, 202 U.S. 344 (1906) where the Court affirmed the conviction of a United States Senator for violating U. S. Rev. Stat. §1782, U.S. Comp. Stat. 1901 (the forerunner of 18 U.S.C.A. §203), saying that:

"Congress, when passing this statute, knew, as indeed, everybody may know, that executive officers are apt, and not unnaturally, to attach great, sometimes, perhaps, undue, weight to the wishes of Senators and Representatives. Evidently the statute has for its main object to secure the integrity of executive action against undue influence upon the part of members of that branch of the government, whose favor may have much to do with the appointment to, or retention in, public position of those whose official action it is sought to control or direct. The evils attending such a situation are apparent and are increased when those seeking to influence executive officers are spurred to action by hopes of pecuniary award."

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\* The penalty for violation is a fine of not more than \$10,000 or imprisonment for not more than two years, or both, and disqualification from holding any office of honor, trust or profit under the United States.

By letter dated April 15, 1968, the Administrative Director of the Courts advised the Secretary of the State Bar Association as follows:

"The Supreme Court's Advisory Committee on Professional Ethics has requested me to advise you that it has decided to defer rendering an opinion in response to the inquiry submitted by you last July, on behalf of the Board of Trustees of the New Jersey State Bar Association with regard to the practice of law by lawyer-legislators, because the inquiry so directly involves the relationship between the judicial and executive branches of government, because of the pending revision of the Canons of Ethics of the American Bar Association, and because of current efforts on the part of the New Jersey Legislature to enact appropriate and effective conflict of interest legislation."

Noting the reference in the Administrative Director's letter to the pending revision of the Canons of Ethics of the American Bar Association, this Committee deems it appropriate to refer to the present Canons of Ethics with respect to "Conflicts" and to the proposed revision. The pertinent provision in the present Canons is found in Canon No. 6 and provides as follows:

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

The pending revision of the Canons is presently in the form of a preliminary draft entitled "Code of Professional Responsibility" published by the "American Bar Association Special Committee on the Evaluation of Ethical Standards."

The proposed Code recommends the adoption of nine Canons under each of which there is set forth a proposed statement of principles, entitled "Ethical Considerations" and in addition a set of "Disciplinary Rules."

Proposed new Canon 6 is as follows:

"A lawyer should exercise independent professional judgment on behalf of clients."

There is nothing in or under proposed Canon 6 dealing specifically and expressly with the problems with which this Report is concerned.

The statement in the proposed Code dealing directly and expressly with the responsibilities of the lawyer-legislator is found in the statement of "Ethical Considerations" and in the "Disciplinary Rules" under Canon 8. Canon 8 is as follows:

"A lawyer should assist in improving the legal system."

The statement of "Ethical Considerations" includes:

"8. Lawyers often serve as legislators or as holders of other public office. A lawyer who holds public office should not accept or continue professional employment that involves personal action by him in conflict with his duties as such public officer. A lawyer in public office should not engage in other activities where his personal interests are in conflict with his official duties."

The "Disciplinary Rules" under Canon 8 include the following:

"A lawyer who holds public office shall not:

- (1) Use his public position for the purpose of advancing in legislative matters the selfish or special interests of himself or of a client under circumstances where he knows or it is obvious that this is done contrary to the public interest.

- (2) Use his public position to attempt to influence a tribunal to act in favor of a client or of himself personally.
- (3) Accept anything of value from a client when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official."

We also note in the letter of the Administrative Director to the Secretary of the State Bar Association the reference to "current efforts on the part of the New Jersey Legislature to adopt appropriate and effective conflict of interest legislation." As already indicated in this Report, this Committee does not consider the 1967 Act appropriate or effective. It would appear from the Administrative Director's letter that the Supreme Court's Advisory Committee concurs in this opinion. Several Bills dealing with "Conflicts" have been introduced in the present legislative session. This Committee does not believe that any constructive purpose will be served by a specific discussion of these Bills, all of which will presumably be carefully considered by the Joint Legislative Commission created by Assembly Concurrent Resolution No. 44.

This Committee does believe, however, that it should state, in general terms, its views with respect to the legislation which should be adopted. The Committee well recognizes that restrictions on the practice of their profession by lawyer-legislators, State officers and employees should not be so all encompassing as to prevent such lawyers from practicing on behalf of clients in situations where adverse interests of the

State are not involved. For example, this Committee does not believe or suggest that lawyer-legislators, State officers or employees should be precluded from appearing in the courts or before State agencies, for compensation, in proceedings which are adversary in nature between private litigants. By way of illustration, we do not see any reason why lawyer-legislators, State officers or employees should not practice before the Division of Workmen's Compensation of the Department of Labor and Industry, which is a State Agency in a technical sense but which operates, in fact, as a court, to adjudicate controversies between private litigants.

#### CONCLUSION

We therefore conclude that a proper place to draw the line between the legitimate interest of lawyer-legislators, State officers and employees in the practice of their profession and the legitimate interest of the State in the elimination by law of the possibility of "Conflicts" between lawyer-legislators, State officers and employees and the State, requires the adoption of legislation, substantially similar to that adopted many years ago by the Congress of the United States to govern its own members, which will prohibit any member of the Legislature and State officers and employees from representing before any State Agency, directly or indirectly, for purposes of financial gain,

any person whose interest is adverse to the interest of the State of New Jersey.

This Report was unanimously approved by the undersigned, being all of the members of the Committee present at a duly noticed meeting held on this date.

Dated: March 5, 1969.

Respectfully submitted.

Elmer J. Bennett- Chairman.  
Martin L. Haines - Vice Chairman  
Richard L. Amster  
Robert M. Dix  
Woodruff J. English  
Harold Feinberg  
Mark F. Hughes, Jr.  
John R. Kelly  
George G. Tennant, Jr.

March 20, 1969

To: The Hon. Joseph J. Maraziti, Chairman  
Conflict-of-Interest Commission  
State House, Trenton, New Jersey

STATEMENT AT PUBLIC HEARING

by

ASSEMBLYMAN WILLIAM E. SCHLUTER

There is nothing more important to the quality of government than the quality of those persons serving in government. Quality is an element that is subjective; it is rightfully determined by the collective judgment of the public at large.

Integrity is perhaps the most important ingredient in this element of quality, and integrity can only be assured by a strong and enforceable code of ethics.

The citizens of our State have a right to expect their representatives to serve in a manner that is above reproach. Unfortunately, this is not the case in New Jersey today. Not only have we heard charges of "Conflict-of-Interest", but also, we have witnessed a complete lack of effective machinery to deal directly with these charges. Passage of a meaningful Conflict-of-Interest law for all legislators and state officials in responsible positions is urgently needed and long overdue.

Although integrity in the performance of public duty should be a personal responsibility accepted by all law-makers,

used the power of their office for personal advantage.

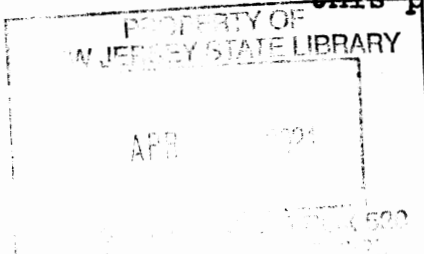
Many studies have been made and much has been written on the subject of laws regulating ethical conduct in Government. The Commission has access to this information which includes reports by the New Jersey Bar Association and model laws enacted in other states.

There are several specific areas to which I direct the Commission's attention. Four of these areas are covered by bills which I have introduced in the Assembly. Hopefully, you will give favorable consideration to the following:

I. Prohibit Legislators from Representing Clients in Adversary Proceedings Before the State.

It is very difficult to know of any instance where a legislator can represent a private client in adversary proceedings before the State where the legislator will be pursuing the best interests of the State. A prohibition of this type should not apply to routine transactions where there is no dispute or nothing at issue.

In my opinion, the conflict occurs here because the legislator has influence over the agency with which he is contesting. Very often, there are no real <sup>PROCEEDING</sup> conflicts in situations such as these, but there is no way to keep the public from suspecting conflicts. Accordingly, ~~this~~ practice should be prohibited.



I do not believe that this prohibition should extend to the partners of legislators, preventing them from appearing before State agencies. Please refer to Assembly Bill 155, attached, which covers this change.

## II. Stricter Lobby Control

The present law controlling activities of legislative representatives or lobbyists (Chapter 207 PL 1967) is weak and ineffective. I refer to two newspaper articles appearing in the Trenton Times under date of April 21 and August 25, 1968, copies of which are attached.

In addition, the New Jersey League of Women Voters surveyed all of the Legislators in 1968, and determined that this was an area which most urgently needs tighter controls.

It would seem to me that the subject of lobby control is a legitimate consideration for your Committee. Lobbyists exercise a great deal of influence in the passage of legislation; certainly the citizens of New Jersey have a right to know what these influences are.

In 1964 when Legislation was introduced before the passage of Chapter 207, there were a number of features which would have effected stricter control in this field. Most of these features were deleted by amendment before the bill became law.

I am suggesting that consideration be given to stricter laws which embody the principles of full reporting and disclosure by all legislative representatives. I have introduced A-160 which would place back into the law those sections which were deleted in 1964 when this subject was being considered by the Legislature. One other feature of A-160 would require the Secretary of State to keep a running record of all lobbyists and their clients. As a further step, the Commission might wish to consider Assembly Bill 28, copy attached, introduced by Mr. Russo which would require all lobbyists to wear identifying badges.

No Conflict-of-Interest legislation would be complete without some treatment of the subject of lobby control. If public confidence is an integral part of this subject, then it is obvious that lobby control falls within your province.

### III. Public Disclosure

I believe that full and complete disclosure by legislators and other public officials would go a long way toward eliminating many of the suspicions and questions of ethics that are in the public's mind. The details of such a disclosure would require a

considerable amount of thought and study. For consideration by the Commission, I am submitting a copy of Assembly Bill #154 which covers this general topic.

Perhaps the only drawback to financial disclosure is that this concept might discourage certain qualified persons from running for office if they do not want to reveal certain financial matters of a personal nature. I believe that this objection can be overcome, however, by stipulating that dollar amounts and values do not have to be placed on all personal holdings. The most important aspect of financial disclosure is in the reporting of associations and business connections which are significant.

In my opinion, the glare of public scrutiny can be the greatest force controlling any illegal or undesirable connections that public officials might have.

It might interest the Commission to know that I have filed my own personal financial statement together with all business affiliations at the office of the Secretary of State, and plan to continue this practice on a yearly basis.

#### IV. Campaign Expenditures

The subject of campaign expenditures has been covered by other communications to the Commission by me. I am hopeful that a separate study can

be undertaken in line with Assembly Concurrent Resolution 9 or Assembly Bill 658.

V. Other Prohibited Activities

There are other situations which the Commission may wish to control by new legislation. For example, Legislators may have financial and other connections with firms doing business with the State. These situations can be covered by a requirement that any goods or services supplied by such firms be subject to sealed competitive bidding. Such a stipulation together with a disclosure law would amply control this area.

VI. Enforcement Procedures

If the recommendations of this Commission are to be meaningful, there will have to be continuing enforcement and surveillance by an agency which can react quickly and punish offenders. Public hearings by such an agency are effective as long as there is a screening process to eliminate unsubstantiated charges before these charges reach the hearing stage. In order to insure public confidence, the membership of such regulatory bodies must be broad; such a body should have representation from various groups, not only from the group subject to review by the agency.

Your Commission will probably recommend legislation which will prohibit certain activities. There are other activities which can be effectively controlled by making them subject to reporting. Finally, there might be some practices which can be appropriately regulated by having them reviewed by the enforcement agency before allowing them to be undertaken.

No examination of legislative Conflict-of-Interest in New Jersey would be complete without consideration of the idea of full-time legislators. Under present conditions, legislators must be engaged in other business activities. Such activities can often lead to conflicts between their private business endeavors and their roles as a legislator serving New Jersey and the people in a district. Is it fair to restrict the earning power of an individual who happens to be a legislator and, therefore, is prohibited from certain types of business dealings? I say that the public trust demands that there be prohibitions on certain transactions. Maybe New Jersey must start to think about full-time legislators, not only to correct conditions which lead to Conflicts-of-Interest, but also to have full-time talent available to handle the multiplicity of problems facing the State. Certainly the number of legislators could be reduced if the Assembly and Senate were to operate on a year-round basis.

Returning to the matter before this Commission - - - - - namely, to recommend legislation to prevent Conflicts-of-Interest. I sincerely hope that you will suggest strong measures. The public demands it, and I believe that the Legislature demands it.

# ASSEMBLY, No. 28

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1969 SESSION

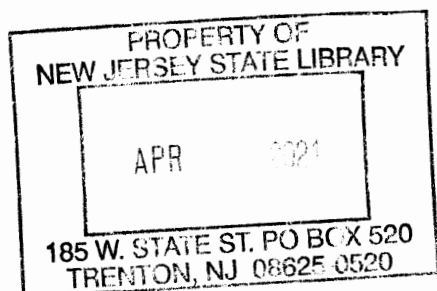
By Assemblymen RUSSO and HOLLENBECK

A SUPPLEMENT to "An act to require the public disclosure of certain information by certain persons seeking to influence legislation in the New Jersey State Legislature and to provide penalties for noncompliance," approved October 16, 1964 (P. L. 1964, c. 207).

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

1 1. Every legislative agent who is in the State House for the  
2 purpose of influencing legislation shall at all times wear a descrip-  
3 tive name tag of a type prescribed by the Secretary of State.

1 2. This act shall take effect 45 days after enactment.



# ASSEMBLY, No. 154

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1969 SESSION

By Assemblymen SCHLUTER and HAELIG

AN ACT requiring legislators, certain State employees and candidates for election to the office of Governor and to the Legislature to make in certain cases public disclosure of their income, assets and other financial matters, and providing a penalty for noncompliance.

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

1 1. The Legislature affirms that, in our democratic form of govern-  
2 ment, it is essential that the conduct of legislators, candidates for  
3 Governor and for legislative office and State officers and employees  
4 shall hold the respect and confidence of the people and that it is the  
5 responsibility of the Legislature to maintain and promote public  
6 confidence in the integrity of the State Government. The Legisla-  
7 ture finds that the public disclosure by legislators, candidates for  
8 Governor and for legislative office and certain State officers and  
9 employees of their income, assets, business connections and affilia-  
10 tions, and certain other financial matters will promote public con-  
11 fidence in State Government and that for that purpose and to that  
12 extent it is reasonable to qualify the right of privacy which such  
13 legislators, candidates, officers and employees may enjoy.

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

3 (a) "Income" means gross income as defined in the Internal  
4 Revenue Code of 1954, as it has been, or shall be, amended and  
5 supplemented.

6 (b) "Public compensation" means any money, thing of value or  
7 financial benefit received as salary or other payment provided by  
8 law or appropriation for services rendered in a public office, posi-  
9 tion or employment.

1 3. Each member of the Legislature, and each officer or employee  
2 of the State of New Jersey, other than the holder of an office or

3 position in the classified service of the Civil Service, who receives  
 4 public compensation at a rate of \$17,500.00 or more per year shall  
 5 file annually, and each person who is a candidate in a general elec-  
 6 tion for the office of Governor, Senator or Assemblyman but who,  
 7 at the time he files as a candidate does not occupy any such office,  
 8 position or employment, shall file with the Secretary of State  
 9 within 1 month after he files as a candidate for such office a report  
 10 containing a full and complete statement of:

11 (a) The amount and source of each item of income exceeding  
 12 \$250.00, each item or reimbursement for any expenditure exceeding  
 13 \$250.00, and each gift or aggregate of gifts from one source exceed-  
 14 ing \$250.00 (other than gifts received from any relative or his  
 15 spouse) received by him or by him and his spouse jointly during the  
 16 preceding calendar year; including any fee or honorarium exceed-  
 17 ing \$100.00 received by him for attendance at any convention or  
 18 other assembly of persons, and the monetary value of subsistence,  
 19 entertainment, travel, and other facilities received by him in kind,  
 20 the value of which exceeds \$100.00;

21 (b) The value of each asset, including but not limited to real  
 22 property and securities and items of personal property of all types,  
 23 held by him, or by him and his spouse jointly, and the amount of  
 24 each liability owed by him, or by him and his spouse jointly, as of  
 25 the close of the preceding calendar year; and

26 (c) All business connections and affiliations, including the direc-  
 27 torship, chairmanship or other office in any corporation other than  
 28 one organized and operated not for profit, partnership or unin-  
 29 corporated business, held by him during the preceding calendar  
 30 year.

1 4. Except as hereinbefore provided for reports required by  
 2 candidates, reports required by this act shall be filed no later than  
 3 April 30 of each year for the preceding calendar year. Any person  
 4 who ceases, prior to such date in any year, to occupy the office or  
 5 position, the occupancy of which imposes upon him the requirement  
 6 to file a report, shall file such report as of the last day he occupies  
 7 such office or position, no later than 3 months after such last day,  
 8 as the Secretary of State may prescribe.

1 5. All reports filed under this act shall be maintained by the  
 2 Secretary of State and shall (a) constitute part of the public  
 3 records of his office and shall be available for public inspection and  
 4 (b) be preserved by him for a period of 5 years from the date of  
 5 filing.

1 6. Reports required by this act shall be in such form and detail as

2 the Secretary of State may prescribe. The Secretary of State may  
3 provide for the grouping of items of income, assets, liabilities, and  
4 business connections and affiliations, when separate itemization is  
5 not feasible or is not necessary for an accurate disclosure of the  
6 income, assets, liabilities and business connections and affiliations  
7 of any person.

1 7. Any person required to file a report pursuant to this act who  
2 willfully fails to file such report or who knowingly and willfully files  
3 a false report shall, upon conviction, be fined not less than \$100.00  
4 nor more than \$500.00, such penalty to be collected in a summary  
5 proceeding, instituted by the Secretary of State in the name of the  
6 State of New Jersey, pursuant to the Penalty Enforcement Law  
7 (N. J. S. 2A:58-1).

1 8. This act shall take effect January 1, 1970.

ASSEMBLY, No. 155

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1969 SESSION

By Assemblymen SCHLUTER, CRANE, KALTENBACHER,  
TODD, COSTA, HAELIG, OLSEN and GARIBALDI

AN ACT concerning the conduct of members of the Legislature and amending the "New Jersey Conflicts of Interests Law," approved October 30, 1967 (P. L. 1967, c. 229).

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

1 1. Section 4 of P. L. 1967, c. 229 (C. 52:13D-4) is amended to  
2 read as follows:

3 4. No member of the Legislature shall engage in any business  
4 activity with the State of New Jersey or shall represent, directly  
5 or indirectly, for purposes of financial gain, any person whose  
6 interests are adverse to the interests of the State of New Jersey  
7 before any State agency [unless he shall have first filed with the  
8 Clerk of the General Assembly or the Secretary of the Senate, as  
9 the case may be, a written statement of such business activity or  
10 representation, setting forth the name of the State agency, the  
11 name and address of the business or person represented and the  
12 nature of the activity before the State agency and his connection  
13 therewith. Such a statement shall be a public record].

1 2. This act shall take effect immediately.

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

ASSEMBLY, No. 160

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1969 SESSION

By Assemblymen SCHLUTER, HURLEY, CAFIERO, PFALTZ, HÆLIG, HIRKALA, PARKER, KEAN, APY, AIKINS, DE KORTE, CRANE, RINALDI, THOMAS, Assemblywoman MARGETTS and Assemblyman COBB

AN ACT to require the public disclosure of certain information by certain persons seeking to influence legislation in the New Jersey State Legislature, providing penalties for noncompliance, and repealing the "Legislative Activities Disclosure Act," approved October 16, 1964 (P. L. 1964, c. 207).

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

1-3 1. Declaration of intent. The Legislature affirms that the pres-  
4 ervation of responsible democratic government requires that the  
5 fullest opportunity be afforded to the people of the State to petition  
6 their government for the redress of grievances and to express  
7 freely to individual legislators and to committees of the Legislature  
8 their opinion on legislation and current issues. The Legislature  
9 finds, however, that the preservation and maintenance of the in-  
10 tegrity of the legislative process requires the identification in  
11 certain instances of persons and groups who seek to influence the  
12 content, introduction, passage or defeat of legislation. It is the  
13 purpose of this act to require full disclosure in certain instances  
14 in order to make available to the Legislature and the public in-  
15 formation relative to the activities, receipts and expenditures for  
16 such purposes, and the source of funds of persons who seek to  
17 influence the content, introduction, passage or defeat of legislation  
18 by such means.

1 2. Short title. This act shall be known as the "Legislative  
2 Activities Disclosure Act of 1969."

1 3. Definitions. For the purposes of this act, unless the context  
2 clearly requires a different meaning:

3 (a) The term "person" includes an individual, partnership, com-  
4 mittee, association, corporation, and any other organization or  
5 group of persons.

6 (b) The term "legislation" includes bills, resolutions, amend-  
7 ments, nominations, appointments and other matters in the  
8 Legislature.

9 (c) The term "Legislature" includes the Senate and General  
10 Assembly of the State of New Jersey, or any member, committee,  
11 joint committee, commission, subcommittee, officer or employee  
12 thereof.

13 (d) The term "contribution" includes a gift, subscription, loan,  
14 advance, deposit of money, personal services, or anything of value;  
15 or a promise, contract, or agreement, whether or not legally en-  
16 forceable, to make a contribution.

17 (e) The term "expenditure" includes a payment, distribution,  
18 loan, advance, deposit or gift of money or anything of value; or  
19 a promise, contract, or agreement, whether or not legally enforce-  
20 able, to make an expenditure and includes expenditures by any  
21 other persons to further activities of the persons filing a statement  
22 and not separately reported by such other persons.

23 (f) The term "direct communication" includes all means of  
24 direct address to the Legislature.

25 (g) The term "legislative agent" includes any person who, for  
26 any consideration, is employed or retained or engages himself, in  
27 behalf of another person, to influence legislation, in person or  
28 through any other person, by means of direct communication, but  
29 such term does not include any person who, in addition to his  
30 regular employment or representation, has, as an incidental pur-  
31 pose, the influencing of legislation by direct communication.

32 (h) The term "influence legislation" means to influence or at-  
33 tempt to influence any action of the Legislature on legislation.

34 (i) The term "statement" includes a notice of representation or  
35 a report required by this act.

1 4. Any person who, on or after the effective date of this act, is  
2 employed, retained or engages himself as a legislative agent shall,  
3 prior to any direct communication with the Legislature, and in  
4 any event within 30 days of the effective date of this act or of such  
5 employment, retainer or engagement, whichever comes later, file  
6 a signed notice of representation with the Secretary of State in  
7 such detail as the Secretary of State may prescribe, identifying  
8 himself and persons by whom he is employed or retained, and the  
9 persons in whose interests he is working, and the terms of such  
10 representation.

1 5. Any person who shall engage in activity making him subject  
2 to filing a statement under this act shall file with the Secretary of  
3 State, in such detail as may be called for by him, a signed report  
4 describing contributions and expenditures in connection with  
5 carrying on such activity, his identity and that of the persons for  
6 whom and in whose interest such activity was carried on, and the  
7 activity pursued in influencing or attempting to influence legisla-  
8 tion. Such report shall be filed between the first and tenth days  
9 of each calendar quarter for such activity during the preceding  
10 calendar quarter.

11 The Secretary of State may, in his discretion, permit joint  
12 reports by persons subject to this act.

1 6. The following persons shall be subject to the reporting and  
2 record keeping provisions of this act:

3 (a) Any legislative agent;

4 (b) Any person who employs or retains one or more legislative  
5 agents and who makes an expenditure or expenditures of \$500.00  
6 or more in any calendar quarter to influence legislation by direct  
7 communication; and

8 (c) Any person who receives \$500.00 or more in any calendar  
9 quarter as compensation, expenses, or both, for the purpose of in-  
10 fluencing or attempting to influence legislation by direct communi-  
11 cation. This subsection shall include any person who receives  
12 compensation for any purpose and includes but is not limited to  
13 an officer or employee of another person, who, in the course of his  
14 duties, devotes any portion of his time to efforts to influence or  
15 attempt to influence legislation by direct communication, if the  
16 amount allocable to influencing or attempting to influence legisla-  
17 tion by direct communication is \$500.00 or more in any calendar  
18 quarter. Any person as to whose activity no fair allocation of  
19 activities is possible shall report his gross receipts, including  
20 salary, and expenditures, together with a statement that only a  
21 portion thereof is for influencing or attempting to influence legis-  
22 lation by direct communication.

1 7. The Secretary of State shall

2 (a) develop and prescribe methods and forms for statements  
3 required to be filed by this act, and require the use of such forms  
4 by persons subject to the act;

5 (b) permit public inspection of all statements filed pursuant to  
6 this act;

7 (c) compile and summarize information contained in statements  
8 filed pursuant to this act, and report the same to the Legislature  
9 after each reporting period;

10 (d) ascertain whether any persons have failed to file statements  
 11 as required by this act, or have filed incomplete or inaccurate  
 12 statements, and give notice to such persons to file such statements  
 13 as will conform to the requirements of this act;

14 (e) report violations of this act to the appropriate law enforce-  
 15 ment agencies and report to the Legislature the action taken by  
 16 such agencies;

17 (f) make such studies and recommendations to the Legislature  
 18 as will tend to further the objectives of this act, and take such  
 19 other action as shall be necessary and proper to effectuate the  
 20 purposes of this act;

21 (g) submit a written report to each member of the Legislature  
 22 annually on the administration of this act.

23 (h) submit to each member of the Legislature during the first  
 24 month of each calendar quarter a written summary report of the  
 25 quarterly reports of the previous calendar quarter filed pursuant  
 26 to section 5 of this act, which summary report shall include, but  
 27 not be limited to, (1) a list of the persons who have filed quarterly  
 28 reports together with the person or persons represented and the  
 29 activity or activities pursued in influencing or attempting to in-  
 30 fluence legislation, and (2) a list of all legislative agents as of the  
 31 date of the summary report, together with the person or persons  
 32 by whom he is employed or retained, the person or persons in whose  
 33 interests he is working, and the terms of such representation.

34 (i) submit to each member of the Legislature a written report  
 35 of any change in the list of legislative agents provided for in h(2),  
 36 above, within 7 days of such change.

1 8. Any person engaged in activity which makes him subject to  
 2 filing a statement under this act shall

3 (a) Keep a detailed record of receipts in connection with such  
 4 activity, including the name, address and amount received, of every  
 5 person from whom \$25.00 or more has been received during any  
 6 calendar quarter;

7 (b) Keep a detailed record as to all loans made or received in  
 8 connection with such activity, including the name and address of  
 9 any person from whom \$25.00 or more has been received or to  
 10 whom more than \$25.00 has been expended during the calendar  
 11 quarter, and the amounts thereof, security given, and terms of loan;

12 (c) Keep a detailed record of expenditures in connection with  
 13 such activity, including a receipted bill or canceled check for every  
 14 expenditure of \$25.00 or more during the calendar quarter; and

15 (d) Preserve, for a period of 2 years from the date of filing the  
 16 statement, all records required to be kept by this act.

1 9. Every legislative agent shall file a notice of termination report  
2 within 30 days after his activity shall cease, on such form as the  
3 Secretary of State shall prescribe, and any person who engages a  
4 legislative agent may file a notice of termination after such agent  
5 ceases to represent such person.

1 10. The statements required by this act to be filed with the Sec-  
2 retary of State (a) shall constitute part of the public records of  
3 his office and shall be available for public inspection; and (b) shall  
4 be preserved by the Secretary of State for a period of 5 years from  
5 the date of filing.

1 11. This act shall not apply to the following activities:

2 (a) the publication or dissemination, in the ordinary course of  
3 business, of news items, advertising, editorials or other comments  
4 by a newspaper, book publisher, regularly published periodical,  
5 radio or television station (including an owner, editor or employee  
6 thereof);

7 (b) acts of a public official in his official capacity;

8 (c) acts of bona fide religious groups acting solely for the  
9 purpose of protecting the public right to practice the doctrines of  
10 such religious groups; and

11 (d) acts of a duly organized National, State or local committee  
12 of a political party.

1 12. Any person who knowingly and willfully falsifies all or any  
2 part of any statement under this act shall, upon conviction, be  
3 guilty of a misdemeanor.

1 13. Any person who shall transmit, utter or publish to the Legis-  
2 lature any communication relating to any legislation, or be a party  
3 to the preparation thereto, knowing such communication or any  
4 signature thereto is false, forged, counterfeit, or fictitious, shall  
5 upon conviction, be guilty of a misdemeanor.

1 14. Upon the failure to comply with any provisions of this act  
2 by any person subject thereto (other than a legislative agent),  
3 the Attorney General may, upon the request of the Secretary of  
4 State, institute a civil action to enjoin such person from engaging  
5 in activity covered by this act until such time as he shall perform  
6 any duty imposed thereby and to require him to file any statement  
7 required by this act for the period he acted in violation thereof.

1 15. Any legislative agent required to file a notice of representa-  
2 tion or report or maintain any record under this act who fails to  
3 file such a notice or report or maintain such record shall, upon  
4 conviction, be guilty of a misdemeanor.

1 16. Every officer, or person performing the functions of an officer,  
2 or any person required by this act to file any statement shall be  
3 under obligation to cause such person to file such statement within  
4 the time prescribed by this act.

5 The obligation of any person to file any statement required by  
6 this act shall continue from day to day, and discontinuance of the  
7 activity out of which the obligation arises shall not relieve any  
8 person from the obligation to file any statement required for any  
9 period of time prior to such discontinuance.

1 17. If any provision of this act or the application thereof to any  
2 person or circumstance is held invalid, the invalidity shall not affect  
3 other provisions or applications of the act which can be given  
4 effect without the invalid provision or application, and to this end  
5 the provisions of this act are severable.

1 18. The "Legislative Activities Disclosure Act" approved  
2 October 16, 1964 (P. L. 1964, c. 207) is repealed.

1 19. This act shall take effect immediately.

# Lobbyists Scorn State 'Disclosure Law'

By EARL JOSEPHSON  
Staff Writer

It would be hard to find many of the 1,300 bills introduced so far in the legislative session which don't affect one special interest group or another.

The bill you won't find, however, is the one which requires the special interests to tell the public when and how they are trying to influence legislators.

The bill, closing loopholes in New Jersey's lobbyist "disclosure" law, has yet to appear — despite early promises by Gov. Richard J. Hughes and Senate President Edwin Forstner of action in 1968.

The session is more than half way to conclusion, and for the lobbyists it is business as usual — relatively few register, fewer file activity reports, even fewer report the bills they work on, still fewer tell exactly if they favor or oppose the bill, and almost nobody says which legislators they buttonholed.

### Lobbyists Won't Talk

God forbid the lobbyists ever should reveal how much money they spend to further their aims, but the governor and the legislature never insisted to begin with that they should.

A provision requiring financial reports was removed from the original bill by the Senate GOP caucus, with the consent of the governor.

But that, in part, has

caused the problems; in the process, the secretary of state's power to require details in activity reports also was removed.

The major problem — the one Hughes promised to correct this year — is that not all lobbyists must register in advance; those whose duties are

only "incidental" to their regular job are exempt.

### Must Report

They must report, along with all registered lobbyists, if they get \$500 per quarter for lobbying. If they can't figure out how much of their pay is for lobbying, all they have to do is say so.

(A lobbyist who attended 11 meetings in the first quarter would have earned \$560 if his salary were at least \$11,808, but this apparently hasn't occurred to the gentlemen.)

Many of the lobbyists use this route to safety; most special interest groups just ignore the law altogether.

\* \* \* \* \*

## Special Interest Groups Seek Varied Legislation

Joseph Katz and Lester Mahr report that they are lobbying against a bill which prohibits service stations from giving away trading stamps.

Katz and Mahr, representing the Sperry and Hutchinson Company, also are lobbying against a bill which creates a state board to regulate service station operators and auto mechanics. They don't want the board to have power to bar trading stamps by regulation.

Fred Wertheimer, lobbyist for the New Jersey Motor Bus Association, also is trying for an amendment to a bill relating auto mechanics.

He is lobbying against a bill which provides penalties for employers failing to report an accident.

### Ex-Governor's Aide

Katz, former aide to Gov. Richard J. Hughes, is lobbying on behalf of the Auto Dealers Association for a bill which creates a board to license auto manufacturers, dealers and salesmen.

10 p.m. and midnight when there is no school the next day.

### Insurance Lobbyist

Nasmith is the lobbyist for the American Insurance Association on a bill banning the sale of insurance by credit card companies. (The AIA opposes the bill.)

Lobbyists for the Independent Mutual Insurance Agents also report activity on the same bill.

The IMIA lobbyists, Nasmith and the AAA auto clubs lobbyist (William Kohm) also reported activity on a bill requiring coverage in an insurance policy for damages caused by an uninsured motorist.

Nasmith and Kohm also lobbied on a number of other bills dealing with the uninsured motorist problem, including one which bans arbitrary policy cancellation, another requiring insurers to notify the state when a policy

is dropped, and others increasing the fees for the uninsured motorist.

### Lobbies for 3M

Kohm and the Minnesota Mining and Manufacturing Company (3M) lobbied for a bill requiring the state to re-reflectize its license plates, at a \$287,000 expenditure this year and \$594,000 the next.

For the Funeral Directors Association, Kohm reported activity on a bill requiring morticians to furnish itemized price list. He didn't say what the activity was.

Frank Kent and John Heber, representing the New Jersey Hospital Association, lobbied for a bill shifting the burden of proving negligence to the person receiving defective blood from a blood bank.

Nasmith, as lobbyist for the railroads, reported activity on bills requiring more gates at crossings and public directors on the boards of companies getting state subsidies.

As a result, in the first quarter of 1968, only 47 special interest groups had registered lobbyists (50). In addition, reports were filed by 13 more lobbyists on behalf of six special interest groups.

Eleven of the 50 registered lobbyists have yet to file their activity reports, although the deadline was Jan. 10 and the law makes it a crime for a registered lobbyist not to file.

### Have Yet To File

Two of the lobbyists have yet to file reports for the last quarter of 1967, and no action has been taken against them. They represent the hearing aid dealers and the Builders, Owners and Management Association.

In addition to criminal proceedings, the attorney general could obtain an injunction against a lobbyist — restraining him from doing his job until he did comply. Neither action has ever been taken.

In only 12 of the 52 reports did the lobbyists itemize the legislation on which they worked. Only six said whether they opposed or supported the bills.

This is the picture you get of lobbying activity in January, February and March as a result of the loopholes in and disregard of the law:

### Here's The Picture

— There was no lobbying on bills to repeal or revise the parochial and private school busing law, or to change the unemployment compensation law of 1967.

— Only the League of Municipalities was interested in a bill picking up the

expired federal tax on real estate transfers and requiring disclosure of price.

— Not a single profession was trying to get out from under the new tax on unincorporated business income.

— Only one business interest wanted an exemption from

The Senate scheduled tomorrow on a prohibits the distributing stamps at stations. It was prompt gasoline retailers, lobbyist is unregistered

The Chamber of lobbyists have neve

## News Analysis

the new minimum wage law and none from the sales tax.

The tobacco dealers are promoting a bill scheduled for a vote tomorrow, which gives them official status in the cigarette tax bureau through a dealer advisory board. Their lobbyist has a railroad pass as a "senate committee clerk" but isn't registered.

in any report the bills which they try defeat. The Chamber you know its post this is in the interest.

The declaration of the 1954 law, how something about preservation and m of the integrity of t five process."

Augustus Nasmith is lobbying for General Motors on the bill. (General Motors opposes the legislation.)

Katz has also lobbied on the dealers' behalf for a bill exempting auto showroom salesmen from the law granting time-and-one-half pay for overtime, and another repealing the tax on retail gross receipts.

He also is the New Jersey Restaurant Association's lobbyist for a bill which permits 16 and 17 year olds to work in restaurants with liquor licenses, and to work between

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# The '64 Lobby Law: A Polite But Ineffective Gesture

By EARL JOSEPHSON  
Staff Writer

The New Jersey Legislature as confronted during its recent session with bills dealing with pharmacists, radio-TV repair shops, x-ray technicians, gasoline jobbers, marriage counselors, social workers, car wash operators, pest control dealers, collection agencies, movers, dentists, mopracators, barbers, umbers, psychologists, lumber dealers, electrologists, and auctioneers. Some of these bills gave tax labor advantages, some

imposed state regulatory controls and some appeared to offer status or competitive advantages.

And all the latest lobbyist reports would have you be-

lieved that the lobbyist interests registered their contact with the legislative process.

It is just another example of why the lobbyist activities

of the Republican legislative majority promised to plug loopholes, there is an abundance of other examples — some of them even more flagrant.

— Despite intense lobbying on bills permitting single public works contracts, instead of the traditional five, only one report mentioned it. (The legislation was approved.)

— There is no reference anywhere to the Hughes administration bill reducing interest rates on retail credit or requiring truthful statements of the rates. (It was blocked in the senate.)

— The realtors, bankers and home builders, although their press release pleas made no secret of involvement, didn't report lobbying for higher mortgage interest rates.

— There was no lobbying

reported on the gasoline or cigarette tax increases, and only one report mentioned any of the bond issues which were put on the ballot.

— CATV lobbyists reported no activity, although a bill providing for state regulation of community antenna television was introduced in the Senate on the first day of the second quarter (and blocked).

— Other bills which presumably caught no outside attention increase the race track admission tax, close loopholes in the law regulating second mortgage companies, and give the state power to regulate petroleum pipelines.

— The State Chamber of Commerce, which sends four emissaries to the State House, decided to disregard the law

completely. Its past reports divulged absolute nothing; this time it didn't bother to file.

— The Industrial Union Council's lobbyists, although registered, didn't file the reports required by law on July 30. (The AFL-CIO withdrew its registration, in the last quarter of 1966.)

— Of the 51 reports filed in the second quarter, only 14 itemize the legislation which the lobbyists worked on and only six reveal whether they opposed or promoted it.

A Major Loophole  
Fifty-two lobbyists had registered with the Secretary of State for 40 special interests, and reports were filed by an additional eleven representatives of seven special

interests. The major loophole is that not all lobbyists must register in advance; those whose duties are only "incidental" to their regular jobs are exempt.

They must report activities, a long with registered lobbyists, if they get \$500 per quar-

ter for lobbying. But if they can't figure out how much of their pay is for lobbying, all they have to do is say so.

However, there were 16 meetings of the legislature in the second quarter and any lobbyist whose job pays \$8,125 a year would have earned

\$500 for attending all of their Secretary of State Robert Buckhardt, who has no power under the law to insist on detailed reports, has called annually for amendments. I got the commitments. I year, but the legislation was never introduced.

## News Analysis

Have, were the handiwork of the sponsors themselves and generated no button-holing whatsoever in the corridors of the State House.

Not one of these special

"disclosure" law enacted in 1964 has proven to be little more than window-dressing and a polite gesture.

In this year when Gov. Richard J. Hughes and the

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Manufacturers

