

FOURTH PUBLIC HEARING

BEFORE

*n.g.*  
THE COMMISSION TO STUDY THE SUBJECT OF CONFLICTS  
IN THE PERFORMANCE OF PUBLIC DUTIES BY PERSONS  
HOLDING PUBLIC OFFICE, POSITION OR EMPLOYMENT,  
WITH THEIR PERSONAL, BUSINESS OR PROFESSIONAL  
INTERESTS - created by Senate Concurrent Resolution  
No. 18 (1956) and reconstituted by Senate Concurrent  
Resolution No. 9 (1957).

PROPERTY OF  
RECEIVED  
OCT 26 1957  
Division of State Library  
Archives and History  
TRENTON

Held:  
Senate Chamber, State House  
Trenton, New Jersey  
October 21, 1957.

Members of Commission present:

Senator James F. Murray, Jr., Chairman  
Assemblyman Benjamin Franklin, III, Vice-Chairman  
James M. Keating

Absent:

Louis P. Marciante  
Albert A. Marks, Jr.

\* \* \* \*

Counsel - John H. Yauch, Jr., Esq.  
Associate Counsel - Daniel A. Degnan, Esq.

974.90  
E54 Copy 2  
1957  
Vol 4

INDEX OF WITNESSES

	Page No.
Rev. Francis P. Canavan, S.J. Professor of Political Science St. Peter's College Jersey City, New Jersey	3
Professor Julius Cohen Professor at Law Rutgers Law School Newark, New Jersey	12

SENATOR JAMES F. MURRAY, JR.: Gentlemen, we will convene once more the Conflict of Interest Study Commission.

Before hearing today's witnesses, I would like to indicate that our Counsel during the past several weeks has issued written and verbal invitations to numerous business, commercial, professional, religious, and civic societies and associations throughout the State of New Jersey to participate in one way or another in our hearings. We are expecting written statements from certain of these groups to be included as appendages, perhaps, to today's report. Other than that, we have presented to you and today will conclude the presentation of all those who have accepted and have sent representatives to us.

At the conclusion of today's hearing, upon consultation with the Commission, we will announce the future plans of the Commission.

Now, Counsel, may we have our first witness for today.

MR. YAUCH: Before I call the first witness for the day, may I state for the record that I have distributed among the members of the Commission a research memorandum, entitled "Approaches to Conflicts of Interest Among Public Officers and Employees," which was prepared under the auspices of Dr. William S. Carpenter, Acting Director, Law Revision and Legislative Services Commission, Division of Legislative Information and Research.

The members of the Commission will recall that in the Concurrent Resolution by which this Commission was created, it was stated that the Commission might call on the various

services which the State has available for assistance, and this research memorandum was brought in this morning. I am sorry to say that Dr. Carpenter, himself, is ill and unable to appear, but this memorandum, I think, will be of great assistance to the Commission.

I might indicate that about the only area that is relevant to this subject on conflict of interest which is not covered by this memorandum is what is done in Great Britain, and I suggested myself, because of my knowledge of the respect they have for law in Great Britain, that perhaps we have the benefit of what is generally done there on this subject. So that area will be explored and we will get a supplemental memorandum on that.

SENATOR MURRAY: Thank you, Counsel. With respect to the memorandum, it is the wish of the Commission, and they have so directed me, that this memorandum be made part of our record and duly marked as an exhibit. I don't recall where we are now in terms of exhibits, but place it in the record under its exhibit alphabet title.

I might call attention to the excellent bibliography which is appended to this memorandum, and express the hope that additional copies may be available for research and library work.

MR. YAUCH: Senator, Mr. Ralph Eisenberg, who worked on this memorandum, told me this morning that there were a number of copies available for that purpose.

SENATOR MURRAY: It will be made part of our record then, Counsel.

MR. YAUCH: The memorandum, for identification, is dated October 21, 1957.

Now, Mr. Chairman and gentlemen of the Commission, I am very glad to introduce Father Canavan, Professor of Political Science in that very illustrious Jesuit College in the city that we have all heard of, Jersey City, known as St. Peter's College. Father Canavan.

Father, will you please, for the benefit of the non-residents of Hudson County, tell us your background in connection with the subject on which you are going to give us the benefit of your views?

R E V. F R A N C I S P. C A N A V A N, S. J.:

I presume you refer to my academic background.

MR. YAUCH: Yes.

FATHER CANAVAN: I have a doctorate in Political Science from Duke University and have also studied the subject at St. Louis, Fordham University, and at Oxford University in England.

SENATOR MURRAY: For the record, may we have Father Canavan's full name, Counsel?

FATHER CANAVAN: Francis P. Canavan, S. J.

Mr. Chairman, I wish to thank the Commission and your distinguished counsel, Mr. Yauch, together with his associate, Mr. Degnan, for the opportunity to appear before you and express my views on the important subject you are considering.

Let me say at the outset that, although I teach in St. Peter's College, I do not represent the College this morning, and speak only for myself.

Despite the academic background, since I have had no experience in public life and am not trained in the law, I hesitate to speak too definitely on the delicate matter of conflict of interests. I shall therefore confine myself to some broad and perhaps vague generalities. It is a fault which I am sure you will find pardonable in a member of the clergy.

First, then, I take it that you are not primarily concerned with framing legislation against actions which are wrong in themselves. I mean such actions as a public official accepting a sum of money in return for special favors to a private interest, which is commonly called bribery; or the use of a man's official position in the state government to favor a company of which he is an officer or stockholder. These actions, in which the public interest is clearly subordinated to a private interest, are simply wrong, and if they are not already illegal, they should be made illegal.

But I take it that the primary object of your concern is the regulation of situations which in themselves may be innocent, but which give rise to a potential conflict between the public interest and a private interest, with the danger that the private interest may be preferred. For example, if a public official is a director of a corporation with which he does business in the name of the State, it does not follow necessarily that he must favor his own company to the detriment of the State. He might be scrupulously impartial in dealing with his own company. But the danger that he will abuse his official position is so great that a man can and should be

prohibited from holding two such posts, private and public, at one and the same time. The term "conflict of interests," as I understand it, refers to situations of this sort.

The question, therefore, is how far is it possible to go, and how far is it desirable to go, in making such situations illegal? I think in general that penal law can be used successfully only to impose minimum standards of conduct. There are some situations of conflict of interest which are so clear and so fraught with the danger of abuse of public position that they should be prohibited under legal penalty.

Senator Waddington, in his statement before this Commission on September 16th, gave you a list of four categories which he thought should be banned by law, and other persons have given similar lists on other occasions. I shall not repeat these lists, but I am in general agreement that they present the basic categories of the type of conflict of interest situation that can be made the object of penal legislation. But beyond these situations in which there is an obvious and serious conflict of interests, I do not think it wise to attempt regulation by statute.

Statutory standards designed to cover too large an area would probably be found to be too rigid and therefore unenforceable. It would be better in my opinion to set up a preliminary code of ethics with an advisory commission or commissions to interpret it. This Commission, which would be dealing with matters of ethics rather than of statutory obligation, would gradually accumulate a valuable fund of experience. Experience would reveal the true practical significance of various dubious

F O U R T H   P U B L I C   H E A R I N G

B E F O R E

THE COMMISSION TO STUDY THE SUBJECT OF CONFLICTS  
IN THE PERFORMANCE OF PUBLIC DUTIES BY PERSONS  
HOLDING PUBLIC OFFICE, POSITION OR EMPLOYMENT,  
WITH THEIR PERSONAL, BUSINESS OR PROFESSIONAL  
INTERESTS - created by Senate Concurrent Resolution  
No. 18 (1956) and reconstituted by Senate Concurrent  
Resolution No. 9 (1957).

Held:  
Senate Chamber, State House  
Trenton, New Jersey  
October 21, 1957.

Members of Commission present:

Senator James F. Murray, Jr., Chairman  
Assemblyman Benjamin Franklin, III, Vice-Chairman  
James M. Keating

Absent:

Louis P. Marciante  
Albert A. Marks, Jr.

\* \* \* \*

Counsel - John H. Yauch, Jr., Esq.  
Associate Counsel - Daniel A. Degnan, Esq.

INDEX OF WITNESSES

Page No.

Rev. Francis P. Canavan, S.J.  
Professor of Political Science  
St. Peter's College  
Jersey City, New Jersey

3

Professor Julius Cohen  
Professor at Law  
Rutgers Law School  
Newark, New Jersey

12

SENATOR JAMES F. MURRAY, JR.: Gentlemen, we will convene once more the Conflict of Interest Study Commission.

Before hearing today's witnesses, I would like to indicate that our Counsel during the past several weeks has issued written and verbal invitations to numerous business, commercial, professional, religious, and civic societies and associations throughout the State of New Jersey to participate in one way or another in our hearings. We are expecting written statements from certain of these groups to be included as appendages, perhaps, to today's report. Other than that, we have presented to you and today will conclude the presentation of all those who have accepted and have sent representatives to us.

At the conclusion of today's hearing, upon consultation with the Commission, we will announce the future plans of the Commission.

Now, Counsel, may we have our first witness for today.

MR. YAUCH: Before I call the first witness for the day, may I state for the record that I have distributed among the members of the Commission a research memorandum, entitled "Approaches to Conflicts of Interest Among Public Officers and Employees," which was prepared under the auspices of Dr. William S. Carpenter, Acting Director, Law Revision and Legislative Services Commission, Division of Legislative Information and Research.

The members of the Commission will recall that in the Concurrent Resolution by which this Commission was created, it was stated that the Commission might call on the various

services which the State has available for assistance, and this research memorandum was brought in this morning. I am sorry to say that Dr. Carpenter, himself, is ill and unable to appear, but this memorandum, I think, will be of great assistance to the Commission.

I might indicate that about the only area that is relevant to this subject on conflict of interest which is not covered by this memorandum is what is done in Great Britain, and I suggested myself, because of my knowledge of the respect they have for law in Great Britain, that perhaps we have the benefit of what is generally done there on this subject. So that area will be explored and we will get a supplemental memorandum on that.

SENATOR MURRAY: Thank you, Counsel. With respect to the memorandum, it is the wish of the Commission, and they have so directed me, that this memorandum be made part of our record and duly marked as an exhibit. I don't recall where we are now in terms of exhibits, but place it in the record under its exhibit alphabet title.

I might call attention to the excellent bibliography which is appended to this memorandum, and express the hope that additional copies may be available for research and library work.

MR. YAUCH: Senator, Mr. Ralph Eisenberg, who worked on this memorandum, told me this morning that there were a number of copies available for that purpose.

SENATOR MURRAY: It will be made part of our record then, Counsel.

MR. YAUCH: The memorandum, for identification, is dated October 21, 1957.

Now, Mr. Chairman and gentlemen of the Commission, I am very glad to introduce Father Canavan, Professor of Political Science in that very illustrious Jesuit College in the city that we have all heard of, Jersey City, known as St. Peter's College. Father Canavan.

Father, will you please, for the benefit of the non-residents of Hudson County, tell us your background in connection with the subject on which you are going to give us the benefit of your views?

R E V. F R A N C I S P. C A N A V A N, S. J.:

I presume you refer to my academic background.

MR. YAUCH: Yes.

FATHER CANAVAN: I have a doctorate in Political Science from Duke University and have also studied the subject at St. Louis, Fordham University, and at Oxford University in England.

SENATOR MURRAY: For the record, may we have Father Canavan's full name, Counsel?

FATHER CANAVAN: Francis P. Canavan, S. J.

Mr. Chairman, I wish to thank the Commission and your distinguished counsel, Mr. Yauch, together with his associate, Mr. Degnan, for the opportunity to appear before you and express my views on the important subject you are considering.

Let me say at the outset that, although I teach in St. Peter's College, I do not represent the College this morning, and speak only for myself.

Despite the academic background, since I have had no experience in public life and am not trained in the law, I hesitate to speak too definitely on the delicate matter of conflict of interests. I shall therefore confine myself to some broad and perhaps vague generalities. It is a fault which I am sure you will find pardonable in a member of the clergy.

First, then, I take it that you are not primarily concerned with framing legislation against actions which are wrong in themselves. I mean such actions as a public official accepting a sum of money in return for special favors to a private interest, which is commonly called bribery; or the use of a man's official position in the state government to favor a company of which he is an officer or stockholder. These actions, in which the public interest is clearly subordinated to a private interest, are simply wrong, and if they are not already illegal, they should be made illegal.

But I take it that the primary object of your concern is the regulation of situations which in themselves may be innocent, but which give rise to a potential conflict between the public interest and a private interest, with the danger that the private interest may be preferred. For example, if a public official is a director of a corporation with which he does business in the name of the State, it does not follow necessarily that he must favor his own company to the detriment of the State. He might be scrupulously impartial in dealing with his own company. But the danger that he will abuse his official position is so great that a man can and should be

prohibited from holding two such posts, private and public, at one and the same time. The term "conflict of interests," as I understand it, refers to situations of this sort.

The question, therefore, is how far is it possible to go, and how far is it desirable to go, in making such situations illegal? I think in general that penal law can be used successfully only to impose minimum standards of conduct. There are some situations of conflict of interest which are so clear and so fraught with the danger of abuse of public position that they should be prohibited under legal penalty.

Senator Waddington, in his statement before this Commission on September 16th, gave you a list of four categories which he thought should be banned by law, and other persons have given similar lists on other occasions. I shall not repeat these lists, but I am in general agreement that they present the basic categories of the type of conflict of interest situation that can be made the object of penal legislation. But beyond these situations in which there is an obvious and serious conflict of interests, I do not think it wise to attempt regulation by statute.

Statutory standards designed to cover too large an area would probably be found to be too rigid and therefore unenforceable. It would be better in my opinion to set up a preliminary code of ethics with an advisory commission or commissions to interpret it. This Commission, which would be dealing with matters of ethics rather than of statutory obligation, would gradually accumulate a valuable fund of experience. Experience would reveal the true practical significance of various dubious

or borderline situations, and would enable the Commission to work out, case by case, a set of norms to be followed in such situations.

Now if I may ask you to bear with me, I would like to illustrate what I mean there: In the code of ethics which was proposed by the similar commission which met in New York State three years ago, one of the standards that they laid down was as follows: "No officer or employee of a state agency, member of the Legislature, or legislative employee, should accept other employment which will impair his independence of judgment in the exercise of his official duties."

MR. YAUCH: Excuse me, Father. If you want to refer to that, it is in the Memorandum, Schedule 1 - the statute itself, in New York.

FATHER CANAVAN: Now, at first glance I would assume that there are certain types of employment where it is obvious that the employment impairs an official's independence of judgment, and other types of employment where it is again obvious that it does not impair his independence of judgment. The type of question that would come before an advisory commission would be precisely in the border area where an honest man might have some doubt about the effect which a certain employment would be deemed to have on his independence of judgment. And I would think over a period of years that simply by considering these cases and trying to work an answer to them, the Commission would gradually evolve a set of principles which would make this standard much more definite, you see, and which would specify much more clearly the type of employment that they would consider improper for a state official to hold.

Now, I should like also to emphasize a suggestion that has been made before; namely, that the Commission on Ethics should be able to make recommendations to the Legislature for changes either in the code of ethics itself or in statutory law. In virtue of its experience over a period of years, the commission could make recommendations to clarify and supplement the preliminary code of ethics and thus turn it into a fuller and more permanent code. The commission might also find that it was able to define certain unethical practices with sufficient definiteness and clarity to make them the object of penal statutes and thus prohibit them outright. Such additions to the penal law, as I see it, would be made only after long experience and observation, and would avoid the danger of rash and overly-strict legislation.

In speaking of a code of ethics and an advisory commission to interpret it, I have had in mind, of course, what was done in New York State three years ago. Since you are far better acquainted than I am with New York's experience, I shall only say that it seems to furnish a very useful model.

The final remark I want to make is that I think that attention should be given to ways of using publicity in order to sanction the code of ethics. The code, of course, is to have no criminal penalties attached to it. But if means were devised whereby unethical conduct by public officials, whether legislators or administrators, would be brought to the attention of the public at large, the publicity alone would be a powerful force operating for the maintenance of high standards of conduct in public life.

What I have had to say to you today, gentlemen, has not gone much beyond generalities, and I must thank you for your patience and courtesy in listening to me. I hope that I have managed to indicate at least the direction in which legislation on this subject might usefully proceed.

SENATOR MURRAY: Father, we have some questions on the part of members of the Commission which they would like to direct toward your remarks.

FATHER CANAVAN: I will be happy to answer them.

MR. JAMES M. KEATING: Father, I don't want to misquote you, but I would gather that your attitude is an attitude of learning to walk before we start to run. We have had many difficult questions posed to us during our hearings, and I must confess that it's very hard to determine whether there is an actual conflict of interest many, many times. I gather, then, that you settle for a code of ethics and an advisory commission, and the code of ethics from time to time could be interpreted or strengthened or altered by this commission. Is that your position?

FATHER CANAVAN: Yes. Well, of course, since the code of ethics, I presume, is going to be incorporated in a statute, the final change would have to be made by the Legislature, but the Commission, I think, should have a definite recommendatory function; that should be part of its task as it accumulates experience and finds out that certain things definitely are inimical to the interests of the State, that it can recommend that they can be declared positively unethical, or if the matter is serious enough and clear enough that it should even be made illegal under statutory penalties.

MR. KEATING: Well, that seems reasonable, because among the doubts I have had in my mind about statutory legislation on conflict of interest is, first of all, that even members of the Bar Association have admitted that it would be difficult to draft a code which would cover every case. We have an instance of a flagrant violation of conflict of interest and which the representative of the State Bar Association admitted that the bill of the Bar Association would not cover, that particularly flagrant violation of conflict of interest - the South Amboy bank case. So from the practical standpoint, I am inclined to agree with you that it might be very difficult to enact conflict of interest legislation for two reasons: One is that it is difficult to draft it, and second that it might be very difficult to get it past the Legislature. To that extent, I think your suggestions today are very meaningful and very good.

Thank you.

SENATOR MURRAY: Father, I did not understand that you excluded the consideration of the experience of other States or municipalities which may somewhat be ahead of us in terms of their experience and, since public life generally has about the same common denominator, I did not understand that you excluded the possibility of our profiting from their experience of two or three, or, in the case of New York, more years, and to that end, I wonder whether you would think it advisable for us in terms of actual penal legislation to look very closely at what has been achieved in other states since 1953 and 1954.

FATHER CANAVAN: Well, no. I would say as a general principle that your guiding norm all the way through here

has to be experience. You are dealing with a practical matter, you see. What you are trying to do is forestall and prevent harm to the interests of the State. Now, whether or not you should prohibit a definite relationship or situation arising depends entirely on what harm it actually does to the State, so that I would say not should you consult the interests of other States and of the Federal Government, which has numerous statutes in this field, but you should go back into factual records - this sort of thing for example: where members of the Legislature have appeared as private attorneys before state agencies, is it determinable from the record that it has made any practical difference? If you find out, for example, that people get higher condemnation awards if they are represented by a member of the Legislature than if they are not, then you have a factual basis in experience for legislating on the subject.

ASSEMBLYMAN BENJAMIN FRANKLIN, III: Father, I don't know whether you have had the opportunity or not in your studies to have been able to arrive at any conclusions as to the experience of the New York legislation and the New York Commission. I just wondered if you could make any comment about their experience in New York State?

FATHER CANAVAN: No. It happens that the day before yesterday I was talking to a rather prominent member of the New York Assembly and asked him precisely that question, and he said he didn't know. However, he did mention the name of the gentleman who is the head of the Commission in the New York State Legislature and said I might call him, but because of the lack of time I didn't.

But that is the sort of thing that I think could profitably be done to find out where a commission has been in existence how much work they have had to do and how valuable they, themselves, think the work has been.

MR. YAUCH: I might say, Assemblyman Franklin, that we have corresponded with the Chairman of that permanent commission in New York, and I have in my file copies of advisory opinions that they have rendered. So I will have that entire record available for you when you finally consider this matter.

SENATOR MURRAY: Father, has it been your experience in the study of political science that conflict of interest is limited to any particular profession or business, or is it not something which we must constantly remember extends to all possible spheres of contact with public life and advantages derived from public positions?

FATHER CANAVAN: I think that is certainly true. If certain professions have been mentioned more frequently, that is simply because more members of that profession have occasion to deal with the government, but no private interest is immune from coming into conflict with the public interest and, therefore, no person representing that private interest is outside the scope of your considerations.

SENATOR MURRAY: Well, thank you very much, Father. There are no further questions.

Counsel, may we have our next witness, please?

MR. YAUCH: Mr. Chairman and gentlemen of the Commission, I am very glad to introduce Professor Julius Cohen of the Rutgers Law School, of the University of Rutgers. I have made available to the Professor, the same as I did to

Father Canavan, the transcripts of prior hearings with the exception of the third one, which I didn't get in time to make it available to them. I thought it would be helpful to them in formulating their views to have the benefit of the transcript of the testimony of other witnesses.

We are very glad to have the Professor with us, and I would appreciate, at the outset, his giving us his background of experience or contact with this subject that the Commission is interested in.

P R O F E S S O R   J U L I U S   C O H E N:     May I first of all thank the Commission and its distinguished counsel for the opportunity to be with you today and to talk about this very important problem. And may I also thank Mr. Yauch especially for permitting me access to the transcript of the record thus far. It gave me quite an insight as to the problems that were involved.

As to my background, briefly, I am a Professor of Law at Rutgers Law School, and my chief field of interest is legislation. I have had not only theoretical academic experience but a great deal of practical experience on both state and federal levels in counselling policy makers on legislative aspects of government.

I shall not dwell on whether the "conflicts of interests" problem is a real problem. The very existence of this Commission and the rash of similar soul-searchings in other jurisdictions suggest the existence of a malady that is somewhat more than merely ephemeral. Nor do I find it necessary to come seriously to grips with those who, despite obvious evidence to the contrary, still insist that morals cannot be

legislated.

Aside from those special instances in which law deals with the morally indifferent - for example, whether we should have two or three signatures to a will, or whether a left-hand turn should be signaled with an arm raised or outstretched - most law is law precisely because it endeavors either to crystallize or to change moral standards within the community. It is true that in some instances, such as during the era of prohibition, law can be notoriously ineffective. This can happen when the moral sense of the community is overwhelmingly at odds with the norms prescribed by law. But such would not seem to be the case with respect to the issue of conflicts of interests. There seems to be strong community sentiment in favor of riveting more securely together the concepts of public service and public trust. The basic problem at this point is not whether there should be controls, but rather what kind of controls there should be to achieve the given end.

Contrary to what some might think, the task of designing the kind of controls for the accomplishment of this goal is far more complicated than might, at first blush, seem. Neither moral exhortations to follow higher standards of public morality, nor a simple "thou shalt not" type of statute with quick criminal sanctions would seem to be appropriate for the job. The reasons for this are quite apparent: First of all, there are difficulties in delineating just whose conduct and the specific kinds of conduct that are to be proscribed under the broad aegis of conflicts of interests. This is a most difficult problem of scope and coverage. Secondly, the machinery needed to control one kind of proscribed conduct might not be appropriate

for controlling another. The burden of what I shall have to say this morning will primarily concern phases of these two problems.

If by "conflicts of interests" one means the points at which the selfish private interests of a public servant compete with his public duties, it can readily be seen that the activities that this conceivably might encompass might well range from crude venality, such as the acceptance of an open bribe, to a dinner invitation by a representative of a private pressure group.

With respect to open and flagrant breaches of the public trust, such as are involved in bribery, embezzlement, etc., the community sentiment has crystallized sufficiently to warrant proscription by fairly well-defined statutory standards. But there are a host of activities that are in the gray zone - activities which have generated broad and unformulated community feelings that seem to be groping for more precise expression. This is apparent to anyone who has read the transcript of, or otherwise followed the proceedings of this Commission. The hearings here are studded with questions by counsel and commission members which endeavor to elicit from various witnesses expressions concerning the propriety or impropriety of actions in this unformulated gray zone. Typical are such questions as: "Should a lawyer-legislator argue a client's case before an administrative body, or before a court?" "Should a policy-maker in either the legislative or executive branch of government participate in condemnation proceedings on his own behalf or on behalf of a client or other third party?" "Should a former government employee be permitted to practice before an agency with which he had just recently been intimately associated?"

To the extent that some of these problems have advanced to the dark gray zone, and experience with them has permitted the formulation of concrete legislative standards - all well and good. But for a vast number of problems that do not at this time permit such legislative or quasi-legislative formulation, some other type of machinery would seem to be called for.

An analogy to the Federal Trade Commission Act might be helpful. At the time that this Act was a bill in Congress, there was considerable moral sentiment in the business community against unethical competitive practices - much as there is present-day sentiment against unethical conflicts of interests. Because it was impossible to foresee the infinite number of situations that might have provoked a reaction of "unfairness" it was decided to forge the standards piecemeal on a case-by-case basis. The method chosen for this task was an administrative agency with quasi-judicial functions, empowered to prevent a future recurrence of undesirable practices through the device of the cease and desist order. This case-by-case method, whereby a vague statutory standard was given substantive content, provided an opportunity for seeing more concretely the ramified considerations of public policy that were involved in implementing the standards of "unfairness"; it made it possible to move from the gray to the black or white by the slow and careful building up of precedents; it provided a method for accommodating the law to changes in moral sentiment; it made it possible to forge standards without imposing the harsh stamp of criminality retroactively upon an unsuspecting first offender.

This type of machinery, it would seem, should commend itself for use in the gray, unformulated zone of the problem of conflicts of interests. For the black and white areas, present statutory machinery might well be reassessed and implemented. In the dark gray areas, authority of a quasi-legislative nature could be given to the same administrative body to deal with the problem by the issuance of more general rules. This, at best, is but a broad-gauged view of the directional lines that I should like to suggest for attacking the problem of conflicts of interests. Many refinements, of course, would be needed - for example, machinery for investigation, for the issuance of advisory opinions for those who might want to avoid the risk of retroactive public censure; investigatory and reporting machinery, etc. But I shall not dwell on these at this time, however.

New York has taken an important step forward in dealing with the conflicts of interests problem, and much of value can be learned from their experience. It would seem, however, that improvements could be made in at least three major respects. First of all, the administrative commission or agency would, at first blush, seem to me to be a more effective model than a combination of the Attorney General and an advisory commission. Secondly, machinery analagous to the "cease and desist order" would seem to be needed for the gray area of activity - this to encourage the bringing of test cases and to allow for the crystallization of standards for the future without the harshness of retroactive criminal and other sanctions. Thirdly, I think that the Legislature should

make every effort to obtain an outside judgment concerning what constitutes conflict of interest of its own members.

During the hearings of the Douglas Committee on Ethics in Government much attention was focused on the problem of whether the club-like quality of legislative bodies generated too much tolerance for practices which otherwise would not be sanctioned. I am well aware of the constitutional provisions which give each House power to make its own rules and to judge the qualifications of its own members. I am also aware of the restrictions that flow from the concept relating to the delegation of such legislative authority. But I am unconvinced that it precludes the solicitation of non-binding advice from a distinguished group other than the Legislature itself - a group which would represent an outside expression of the public's conscience as it relates to the matter of conflicts of interests. I think that New Jersey has a great opportunity to provide much-needed national leadership in this direction.

Thank you.

SENATOR MURRAY: Professor, first of all may we thank you for this excellent concise presentation. I know the members of the Commission have some questions which they wish to ask.

Assemblyman Franklin.

ASSEMBLYMAN FRANKLIN: Professor, I would like to ask the same question I asked the preceding witness as to whether you have had any experience or knowledge of the way the New York Commission has developed and what sort of experience they have had in New York State with their statute and their code of ethics. I wonder if you could comment on that?

PROFESSOR COHEN: I am very sorry that I have not had a vertical "look-see" into the workings of the New York experience. I have not had the time, but I really have had the inclination and I shall try to pursue that inclination further, quietly.

MR. KEATING: Professor Cohen, unlike the preceding witness, I gather that you favor statutory legislation to avoid conflicts of interest. Is that correct?

PROFESSOR COHEN: No, I don't think it is correct.

The burden of what I have been trying to say cannot be put down in that black and white fashion. What I suggested was that with respect to the very clear black and white zone, which is bribery, embezzlement, etc., there is nothing wrong with the statutory device in which the standard would be set forth clearly. In the gray zones, I would use the statute, just as they did, for example, with the Federal Trade Commission. The statute simply said in very broad terms that it is bad to follow practices that would constitute an unfair trade practice. It was generic. Beyond that, what they did was to create an administrative tribunal to implement this statutory standard by quasi-judicial techniques. I am suggesting that in addition to the quasi-judicial techniques, these be implemented in a quasi-legislative way - not a statutory way, but by the device of administrative rules, you see, when it can be done. If it can't be done, I suggest that the administrative commission resort exclusively to the quasi-judicial, on a case-by-case basis.

MR. KEATING: Well, as a precedent to that, don't you think it would be necessary to promulgate a code of ethics first? You see, we have been confronted here with two kinds

of conflicts of interest. We have been confronted with a conflict where it was obviously bribery or embezzlement, and then we have been confronted with what you might call "peddling influence" - not always a direct influence, but a hidden influence, an indirect influence. To me, it seems that it is necessary to set up some of the rules of the game before we go much farther. Would you consider a code of ethics a step forward?

PROFESSOR COHEN: Commissioner Keating, I would consider a code of ethics a step forward if it would be possible to crystallize these standards meaningfully. My own guess is that one can go quite beyond the amorphous, generic class of unfairness and incorporate, for example, at a level of less generality some of the standards that already have been crystallized in the New York area. These standards are also vague, about as vague as the other ones. I am suggesting that when you enact, perhaps statutorywise, these vague standards that are less vague than the first standards that I suggested, you still need implementation in the gray zone cases. For this, I think an administrative commission of the type that I suggested would do the job.

No, I'm not at all averse to crystallizing what can be crystallized.

MR. KEATING: I am in complete agreement with you.

Now I'll ask you a question which you may not care to answer: In giving your educational background, you stated that you had had experience in offering assistance to policy-making and legislation. The statement has been made here many times, and today it was repeated in a quotation by you, of the "club-like" quality of the Legislature. From a practical

standpoint - and this is my question - do you think that the Legislature of the State of New Jersey would pass the type of legislation which has been proposed at these hearings and which you have had the opportunity only to read from the transcript of the hearings?

MR. YAUCH: Commissioner Keating said that you might not want to answer that question. There have been a lot of people over the years who have tried to analyze the minds of members of the Legislature as to what they might or might not do, so I am sure he had that in mind--

SENATOR MURRAY: Counsel, may I interject that such analysis might well be the burden of a separate commission to be set up in the future.

PROFESSOR COHEN: I have no objection to answering your problem this way: I have had no special experience with the New Jersey Legislature, but I think that, in terms of prediction, it is not at all unfounded to expect a Legislature to do some of the things that have been suggested before this body. This is a problem of prediction of what things will come. I should want to go beyond that, as a teacher, and urge that it be done.

MR. KEATING: Thank you very much.

ASSEMBLYMAN FRANKLIN: Professor, I just had a question about your proposed quasi-administrative commission or agency: Have you thought at all in more specific terms as to how it might be constituted, who would appoint it, would its members receive compensation, what sort of power should it have, and so on?

PROFESSOR COHEN: I have not thought through the details for the drafting stage. I do not think that would be a very difficult matter once the principles have been agreed upon, but

in my mind it is possible to get some very fine, high standard, high ethically-principled individuals to serve on this commission. There are all sorts of ways to create a commission. It could be a permanent one, depending on how much business - or the commission could work on a per diem basis, assembled, for example, when the need calls for it. I have not thought through the precise details. I thought it would be a better function for myself to try to get across the principle. The implementation is a problem of drafting skill, which should not be a very difficult one.

I was particularly impressed in studying the framework of the New York system with the fact that with the Attorney General at the key spot and the advisory commission simply sitting around and waiting until they are called, there would be the absence of a follow-through, a constant searching, and a constant question, and a constant vigil with respect to this problem - not a sporadic one when some case would come up and then the advisory commission would be convened. I think it would be much better in the long run to have a going concern with the eye of the public conscience constantly on the problem rather than in a sporadic way, and I just got the feeling that the machinery that the New York Legislature set up did not provide this element of constancy that I privately am interested in.

SENATOR MURRAY: Professor, with respect to the area which I believe you defined as the gray area, and for which you have suggested the possible establishment of an administrative group that would encourage case after case on specifics to be brought before it, have you given thought as to whether or not a

somewhat similar approach, perhaps the same approach, might not be made, but rather than establishing a separate administrative tribunal with authority to hear and decide - instead of that to swing it over into the law courts themselves?

PROFESSOR COHEN: The answer to that, in a way, is the answer to the reason basically for the existence and growth of administrative tribunals. One of the purposes for the growth of administrative tribunals is, first of all, the absence of time on the part of either the legislative and oftentimes the judicial branch to deal meaningfully with these problems. Take the area of the Federal Trade Commission; take the area of the National Labor Relations Board - both of them are examples of quasi-judicial functions. If you took the business of both of these and made the court answer at first blush the problem that they are faced with, you would have such a bad backlog of work for the courts that it would almost paralyze them. The courts can get the cases after somebody in a litigious situation says, for example, that the administrative agency exceeded its power or dealt with the problem unfairly, that it, itself, was guilty, if you will, of not permitting due process of law at the hearing. The court can get the big cases, when there is a very serious problem as to what principle should be set down, but prior to that, if you delegate this first hand to a court, you are going to assist in the development of the bogging down even more of the court system itself.

SENATOR MURRAY: Well, what I had in mind, Professor, was that there have been, as I am sure you noticed from reading the minutes, some suggestions made that perhaps a body - let's call it that - could be established, to which,

in cases of resort before the fact, troubled individuals might come for guidance prior to accepting a commitment or undertaking an act. And this would not even have quasi-judicial powers in the understanding of those who suggested it to us. Now, my reason for having placed the previous question to you was a worry on my mind that we might be building up a body of quasi-law that would defeat the sharp encounter which is necessary in certain areas with which we are confronted.

PROFESSOR COHEN: I am not clear why the building up of quasi-law would defeat in this way.

SENATOR MURRAY: Would it not possibly give a third area? In the first area you would have the code of ethics that might be respected or not; in the second area you would have the obvious penal violations. Would this, however, not be something in between that might permit a great deal of delay and obfuscation and confusion with respect to those very few people who would be deliberately seeking to derive interests at variance with our conflict of interest principle?

PROFESSOR COHEN: Well, the theory of advisory opinions, for example, which I alluded to very briefly, is quite consistent with the creation of an administrative tribunal. I should prefer to have the advisory opinions issued by this quasi-judicial tribunal, giving a person who is unsure of his action notice beforehand of the probability of certain standards. Now, the alternative to that is to seek some sort of an advisory opinion from a court, which courts do not like to give, as you know - they usually want to wait for declaratory judgments where the issue is almost crystallized in a litigious situation. The

courts are reluctant to give advisory opinions, with very few exceptions, throughout the land. Now, it is very common practice for quasi-judicial, as well as quasi-legislative agencies, to issue advisory opinions by all sorts of techniques. Some may call it an advisory opinion. With respect, for example, to the Food and Drug Administration, they issue what is known as "trade correspondence letters." A harassed manufacturer doesn't know, for example, what he must do in order to avoid the wrath of the food and drug statute. He writes a letter in to the Food and Drug Administration and they answer him - not alone privately but they publish this so that the entire trade can see it. There is nothing at all inconsistent, you see, with the creation of an administrative agency and at the same time the building up of machinery within the agency to allow for the advisory opinions. One doesn't have to wait for that. It seems to me he will get quicker service that way than by having to wait for a litigious situation to crystallize itself before a court.

I might add one other comment with respect to the advantages of an administrative agency as over against a court: The court has a variety of problems before it. It is harassed. It cannot really become a specialist in this area. One of the reasons for the creation of a separate entity here is for the commission to develop a sense of expertise in knowledge of the area, not only what goes on within the jurisdiction but outside and abroad. They become experts in it and I, for one, think that the building up of expert knowledge in this field, in which the sole problem is conflict of interest, is much more advantageous than waiting until the court sporadically listens to a problem and sets moral judgment on it.

MR. KEATING: Professor Cohen, I think you have made a very important point - the reluctance of courts generally to give advisory opinions. Now, as different members of the bar have testified here - we have asked them the question: What action has either the Legislature or the Bar Association taken in the case of these particular scandals that have been enumerated? And in each case the offender was a member of the bar. The answer to that has been, "Well, nobody brought charges against them." Now, with a commission of the type you recommend, I can see that two things could happen: A man with an honest difference of opinion in his own mind as to whether or not he was doing something which was improper, could go to the commission and, to a limited extent perhaps, obtain an answer to his problem. On the other hand, do you envisage that this commission would also take positive action where it was known that wrongdoing existed? if only gained from the press, for instance - that they would boldly step out and assert themselves?

PROFESSOR COHEN: Precisely. This is one of the major functions of the administrative tribunal that I had in mind; - when the Federal Trade Commission, as a result of its own investigators, as well as the result of complaints from the outside, takes the initiative to process the complaint itself. The National Labor Relations Board does the same thing. In other words, it is not only an agency that sits in judgment after something is brought before it. It helps in the process of ferreting out, itself, in a positive way the very evils that we are trying here to avoid.

MR. KEATING: Now, how would you handle this particular situation? One of the scandals in the State Government was unearthed after the state officer had completed his term of office and, as a matter of fact, after he had died. In what way would the commission that you are recommending protect the citizens against that type of wrongdoing?

PROFESSOR COHEN: All that the commission would have to do in a broad way is to set its sights, timewise, in futuro as well as retroactive, if it can, for example, with respect to those people who have ceased their relationships or whose relationship with the government has stopped. This doesn't necessarily mean that one cannot bring any action against them. We have instances, for example, internally in some departments in Washington, I know, of a bad practice, an unethical practice that is prohibited, where a person who has had work with the commission has gone out into practice, and a year later or six months later tries to take advantage of what inside information he might have for his own private purposes. Now, there is nothing at all in the rule-making process that would prevent this sort of action from being proscribed.

With respect to those cases that are in the dim past, you have a problem, obviously, of resurrecting now bad conduct that was not considered bad at the time. But to the extent that the statute of limitations that you might have, for example, has not run, there is no reason why you cannot reach back into the immediate past for possible action.

ASSEMBLYMAN FRANKLIN: Professor, I wonder if I could ask you a question or two about the practice of the Federal Trade Commission. Your very ingenious suggestion is quite

interesting to me. You say that one of the advantages, as I understand it, of the "cease and desist" procedure used by the Federal Trade Commission is that you apply your prohibition in futuro without exacting retroactive penalties. Now, can I ask you a question about that? First, does the Federal Trade Commission do its own investigatory work and, as a result of that work, on its own issue a cease and desist order? And, secondly, can any citizen or interested party come before the agency and register a complaint which might result in the issuance of a cease and desist order?

PROFESSOR COHEN: My understanding of the Federal Trade Commission practice is that the commission itself may initiate a complaint or the commission may receive a complaint. Now, the cease and desist order is not the complaint. It is, in a sense, the judgment of the commission that, after having had a hearing on all of the facts pro and con, if they are of the opinion that there has been an unfair trade practice, at that point they say to the party involved, "you must cease and desist." Now, under the prevailing statutory model which is followed in other areas, the commission does not have self-enforcement power. It must borrow coercive power from the court. It takes its cease and desist order and goes to the court and asks the court, "please enforce this for us." This is under the statute. Now, the court at that time has the job of seeing that the procedures of the commission were proper.

ASSEMBLYMAN FRANKLIN: I suppose that there are penalties; I don't whether statutory or not, if the court proceeds to enforce the cease and desist order and there is non-compliance.

PROFESSOR COHEN: The penalty that is used is rather an effective one. If the court is in accord with the reasoning of the commission and confirms or affirms the cease and desist order, the court then says to the individual, "you must obey this order." Now, failure to obey equals contempt, and there is the sanction.

I might suggest, too, that it is necessary, sir, to carve out an administrative tribunal exactly on the same basis as of the Federal Trade Commission. I could give you, for example, a bit of experience that might be helpful from the National Labor Relations Board. Not only does it have the power to issue a cease and desist order, but it has the power to go beyond that and implement the order in an affirmative way. For example, "Do this or do that." It tells an employer, "Rehire this employee because of your unfair labor practice," or it tells an employee, "Do this thing. Stop harassing unfairly the employer." They may implement that, and that also is included in the cease and desist order, which again goes to the court for review and enforcement.

SENATOR MURRAY: Professor, to what level would you feel that the quasi-judicial program which you have described should descend in terms of echelons of government? Obviously, we have discussed mainly here the conflict of interest as it affects the State, but under our more modern concepts state funds are extending downward to the county and city level and to the board of education level and, with that, we have noticed, goes the danger of conflict of interest. Would this group or commission, such as you describe it, extend its authority downward to the local government or perhaps even to the board

of education level?

PROFESSOR COHEN: What I had envisaged was an encompassment that would include anyone in public work - I shouldn't want to use the words "public office," - but a public employee, and so forth, at all levels of government called the state government. If the county is considered, for example, to be part or a subdivision of the State, it would include that as well - anything that one could, for purposes of New Jersey, call state employment.

ASSEMBLYMAN FRANKLIN: Professor, did you have any feeling about the enforcement of, say, a cease and desist order by this administrative commission that you are talking about? Did you have a feeling that the enforcement of those orders should be by court order, as in the case of the Federal Trade Commission, or did you have some other feeling about it?

PROFESSOR COHEN: Well, my feeling is based on attitudes that come from being a lawyer. And, today, traditionally, it is very rare to think in terms of an administrative commission with its own powers; they are not trusted to that extent. Most administrative commissions, on both federal and state level, must borrow coercive power from the court itself. Maybe this will change in time when the administration commissions themselves get a little more respectable in the sense of having more confidence. There is a tendency in that direction; for example, with respect to - I don't want to misuse the word "respectable" - if you know what I mean - in terms of having the court confident of what it is doing. It takes a long time for it. But the Securities and Exchange Commission has a quite bit of temporary enforcement power because of the needs of the situation, and I think it is growing in that direction. But I think, by and

large, the attitude of courts today is one of watchful waiting. They say, in effect, "We will respect you, and so forth, but we would like to give you a 'look-see'". With respect to some commissions the "look-see" is such that the courts trusting them will affirm most of their decisions. Others, in which the area is new, they will look at with more of a jaundiced eye. But I think my answer is a law answer that this is what must be under present situations.

MR. KEATING: Professor, in talking about cease and desist orders of the Federal Trade Commission, you have, of course, not referred to the many, many consent decrees that are entered into, and it is my hope that the commission of the type which you are recommending might have an analogy to the consent decree in that a man with a troubled conscience would get an answer to his question and that would be the end of the problem, or a man without an enlightened conscience would be put on guard and to a certain extent consent to the wishes of the commission by abstaining from that which he is doing at the moment.

PROFESSOR COHEN: Yes, that's certainly a conceivable sort of procedure within the framework of what I have envisaged, yes.

MR. KEATING: And it would be possible with your type of commission?

PROFESSOR COHEN: Yes, indeed so.

SENATOR MURRAY: Professor, without a firm base of legislative enactment as a foundation for its own activity, and assuming perhaps, even in an extreme case, that all we had was an enunciation of a recommended code of conduct,

leaning on that alone, would you not envision constitutional problems if such an administrative tribunal were to be established and were to be linked with an appropriate court and cease and desist were to be exercised, for example, against John Jones, a legislator, who wanted to vote on a bill.

PROFESSOR COHEN: If you will recall from the material that I presented this morning, I suggested that I was aware of the constitutional problems as they would affect the legislative body; they would be serious constitutional problems that would come out of an attempt of the Commission to get enforcement of its orders against a legislative group. This, I understand. I envisaged this: I think it would be a wonderful step in the right direction and show much needed leadership for the Legislature to ask the Commission's suggestions for its own standard that it could adopt itself. What I was searching for was a technique whereby the Commission be asked by the Legislature and would set down the standards and be representative of the public conscience from the outside and not from within.

Now, there is nothing in my estimation that would be unconstitutional for a legislative body first of all to incorporate into its own rules the requirement that when a body is in trouble, he should submit his case for an advisory opinion from this commission. The Legislature does not have to adopt it legally. But that is not what I am concerned with. I think it might be a very effective device public opinionwise to have the Legislature toe the mark. It would be very difficult, it would seem to me, for a Legislature to ignore a strong statement of normative standards of conduct from a commission even on an advisory basis.

I would circumvent the constitutional problem by not requiring the legislative body to abide by it, but simply require it internally, within its own rules, to seek the advice of the commission concerning what it feels the normative standards should be.

SENATOR MURRAY: Another area that has given us some disturbance in terms of these contemplated procedures is an area which, frankly, has not received too much direct attention, but nevertheless the problem is there. Many of the possible conflicts of interest affecting disadvantageously the State as a body politic could arise from administrative appointments by the Executive. Now, if you will notice, some of these gentlemen serve in extremely important policy-making and recommendatory positions without pay. I wonder whether or not, again on the question of constitutionality, your procedure wouldn't find itself at some date face to face with the possibility of a cease and desist against the Chief Executive appointing someone to advise him.

PROFESSOR COHEN: I cannot speak with assured authority, because I have not investigated this problem vertically, but if I were to venture a hunch based on experiences in other areas, there will be much less of a problem with respect to an administrative cease and desist order leveled against an executive department or branch than the legislative. Why? Because the administrative tribunal itself is in effect part of the arm of the Executive. It doesn't conflict with it; it's part of it. Secondly, you have the absence, it seems to me, on the executive level of the same sort of provision you have on the legislative level, or you have imbedded in the Constitution

with respect to the Legislature, seemingly exclusive control over the qualifications of its own members and also its own rules. I am not aware of such a provision in the Constitution applying to the executive body. By and large, the administrative agency is part and parcel a part of the executive branch, even though it can be given the status of an independent commission. It's more in tune with the executive branch and therefore less in conflict with it. If you would want an off-the-cuff judgment, which I hesitate to give - I want simply to designate that it is off-the-cuff - I should anticipate much less of a problem with respect to the executive branch than with the legislative branch.

SENATOR MURRAY: It has just been the feeling of some of us listening to the testimony and examining reports from other jurisdictions that although the prominently-featured portion of the ice berg of this problem, the target, if you will, and sometimes the goal of a reform, seems to be the legislative branch, there is a considerable body of the problem below the surface in the various administrative agencies and in the executive.

PROFESSOR COHEN: I agree with that. I think that one cannot really make the judgment that the problem is basically indigenous only to legislative soil. It extends all through the various departments of government.

SENATOR MURRAY: And, consequently, although we wish to make recommendations that would effectively cure any of the above-surface difficulties, we are aware that the very same recommendation must equally cure whatever problems may exist below the surface and, as I say, they are presenting themselves

as increasingly numerous and difficult in potential. I have no specific violations at all in mind and no personalities, but as the testimony paraded before us and the witnesses, the various heads of departments, for example, made clear their own individual codes of ethics and the problems they had, I think it was revealed to us with a good deal of emphasis that we must be aware that this is a three-sided triangle at least.

PROFESSOR COHEN: Yes, I agree.

SENATOR MURRAY: Are there any other questions? Counsel, do you have any other questions?

MR. YAUCH: Yes, I have. The members of the Commission have covered almost all of the points that came to my mind as the Professor was discussing this problem, and I know the Professor will understand that we are searching in a field that isn't very clearly defined, even though other States have dealt with the problem - but how adequately and effectively they have dealt with it is a question. I know you will appreciate that in searching for information, now that we have you with us I hope you will tolerate our questions even if they are a bit prolonged.

Now, you are familiar with the report and with the legislation that resulted from the New York Report on this subject.

PROFESSOR COHEN: I am.

MR. YAUCH: You will recall that as to the permanent commission that was set up for the purpose of giving advisory opinions and referring to the Attorney General certain violations of the law, and so on, the machinery adopted there, as far as the legislative branch is concerned, setting up

this permanent commission was a resolution, and that the members of the permanent commission were members of both Houses; in other words, the Assembly was made up of Assembly members on the commission and the Senate of Senate members. Now, do I take it from what you have said that in view of, as you term it very aptly, "the club-like atmosphere", it would be an advance in this field that we are groping in for the Legislature here in New Jersey to see fit to designate some outside representatives to sit on this commission, bearing in mind at all times that finally their recommendations are merely advisory? Is that your thought?

PROFESSOR COHEN: That's very well stated. Advisory, however, only with respect to the legislative branch itself because of the existence of the constitutional barriers, - correct.

MR. YAUCH: But your thought is that it would be better if the members of the commission were made up of persons from outside of those members of the Legislature?

PROFESSOR COHEN: Yes, I do. The feeling that I have concerning it and the suggestion that New Jersey has a chance for great leadership here comes as the result of having sat in in Washington, during the time of the Douglas Commission hearing on ethics in government. There were a lot of side-line grumblings that came to my ears - "It's all right for the Legislature to sit in judgment on the other branches of government, and so forth, and spank them and say, 'You're a naughty boy,'" but there is a sort of resentment that is widespread that the Legislature should sit in judgment on itself - violating a very basic concept that has been formulated in our jurisprudence

for a long time. And I think that this is an area where you could provide a great deal of leadership to show that the Legislature is not only interested in raising standards elsewhere but really it is basically interested in raising standards itself, and inviting the highest moral sense of the community from the outside to sit at least in advisory judgment on its own conduct.

MR. YAUCH: I don't believe I made available to you the third transcript of the last hearing.

PROFESSOR COHEN: No.

MR. YAUCH: I don't think that was available to me to give it to you in time. But most of the testimony that is in that transcript was presented by representatives of the New Jersey State Bar Association and had to do with legislation that a member of the State Bar Association drafted and recommended to the Legislature. Have you had an opportunity of examining that proposed legislation?

PROFESSOR COHEN: I have had an opportunity to see drafts of two proposals, if that is what you have in mind. My initial impression of these proposals is that it basically deals with the problem via the criminal law route and the burden of what I have been trying to say here is that I do not think that the criminal law route is the exclusive route that should be followed, that there is a much better type of machinery to deal with the gray zone outside of the criminal law, and the machinery that I have suggested would provide a forging of standards with a minimum of undue harshness to those who do not really know which way to go. My primary reason for not being in accord with the draft that was presented by the Bar Association

was because of its heavy emphasis on the criminal law route.

SENATOR MURRAY: Professor, I wonder if it would be asking too much for you to give us the benefit of your own comprehensive definition of what is conflict of interest?

PROFESSOR COHEN: That is the sort of question that a law teacher immediately would decline to answer - as if a student would ask, "Well, what is justice?" or "What is unfairness?" This is precisely the reason why I think that machinery for refinement must come in. I would be hesitant at this point to give you a definition that I would be proud of at this moment of what constitutes a conflict of interest. It's a very difficult problem.

SENATOR MURRAY: Well, perhaps in fairness I should say that the one aspect of it which has frequently baffled us, as interpretations have reached us, has been the point as to whether or not conflict of interest must include some private gain for someone, or whether or not ~~a true~~ conflict of interest problem is already there if the State, the public trust, is to be harmed, whether someone gains privately or not; for example, we had witnesses here who pointed out that, in their opinion, there was conflict of interest because the State was harmed even though John Jones did not make a penny - he may have made great political gain; he may have had gain in power or prestige to the disadvantage of the public trust. That, it would seem to me, should be part and parcel of the definition, not alone private gain for someone but measurable harm to the public, to the State.

PROFESSOR COHEN: If you want my personal feelings on the matter, I am in complete agreement on that score. And

I would not necessarily limit private gain to private monetary gain. There can be all sorts of gains; for example, political or power gain at the expense of the State. A conflict might arise there. My concept as to what is private is much larger than merely bowing to money.

SENATOR MURRAY: Well, there were those who indicated that the word "private" need not be an essential part of the definition at all.

PROFESSOR COHEN: Well, in the examples that you gave, I could just as easily encompass all of them within the area of private without even having to worry about the semantics of it actually.

SENATOR MURRAY: Well, for example, one case that comes to my mind was that of two contracting jobs, each of them costing exactly the same to the State, each contractor making exactly the same amount of private gain or profit, but one group superior to the other in the performance of work and, therefore, by giving it to Group B instead of to Group A, through a conflict of interest of John Jones, the State suffered.

PROFESSOR COHEN: Did you notice you said "through a conflict of interest of John Jones," which again you can tie to some sort of a private gain, be it monetary or otherwise. It can be the payoff of a political debt, for example; it can be preference to friends, in the sense that I like John Jones better than I like Richard Roth, etc. But still there is an element of private gain there, you see. It need not necessarily be translated in cold cash terms.

MR. KEATING: Professor, I would like to remind you that in your opening remarks you gave a very good definition of conflict of interest, and if you will refer to your opening remarks you would remember it was along the lines that at any point where the selfish interest of the state officer or employee was served. If you can find it, I wish you would repeat your definition. It's the best that has been brought to the attention of the Commission to my knowledge.

PROFESSOR COHEN: Commissioner, I was very cautious, if you noticed, in my remarks. I utilized a law teacher's technique by putting this in the subjunctive. I said, "If, by 'conflicts of interests' one means the points at which the selfish private interest of a public servant competes with his public duties."

MR. YAUCH: Referring again to the legislation recommended by the New Jersey State Bar Association and, by following this line of questioning, I don't mean to imply or indicate that I have any definite view one way or the other on it. It's my duty here, as I see it, to the members of this Commission to provide all the information so that they can come to some proper conclusion. It seemed to me, from listening to the witnesses who represented the New Jersey State Bar Association, that in substance they said, "Well, now, there are laws of the character that we are recommending here that have been on the statute books, federalwise, for 90 years, and what's good for the federal government would seem to be good for the state government, both as far as far as officers and legislators and employees are concerned." Have you had any opportunity of

referring to the U.S. Criminal Code provisions having to do generally with this subject? Would you please give us your thought with reference to the contention that has been made that if it's good enough for the federal government it's good enough for the state? Will you please give us your observations on that?

PROFESSOR COHEN: I have not examined the federal statutes in detail but I have seen and heard testimony by Senator Douglas, who chaired the Committee for the search in the realm of ethical practices, in which he did enumerate the federal statutes and incorporated the federal statutes right in the back of his report, but there are statements there unmistakably that he did not think that these federal statutes were effective, that they are all right on the books but for some reason either they were not implemented, there was not a strong enforcing arm, or they were too vague, or because they were criminal statutes there was a hesitance to bring these things out into the open. There is a natural hesitance on the part of the citizenry to process cases that have a criminal penalty connected with them. Senator Douglas, himself, found these federal statutes wanting in terms of providing the kind of controls to assure this high standard of moral leadership. If this is the case with respect to the federal statutes, I see no reason why the States should fall in line with the federal statutes. I think the time has arrived wherein the states perhaps can provide the leadership that the federal government itself needs in this area.

MR. YAUCH: One more question: Do you think that there is any distinguishing factor between, let us say, the law on this subject as it should apply federally and as it should apply

within the State - that having to do with legislators on the federal basis - Congressmen, United States Senators - the duties of those elective offices are such that it is practically a full-time position, whereas in relation to the duties of state legislators it's not generally considered, although I suspect that in probably many cases it is, to be a full-time position. Do you conceive that there is any difference in the approach that should be made because of that factor?

PROFESSOR COHEN: There is a conceivable basis for differentiating, not in terms of high ideals but in terms of the practicalities of the situation. There might be some need for differentiating between a part-time legislator, who has a law business, for example, and has his regular mode of activity, and a full-time legislator as in Washington. This is a complicated problem obviously, because where you have part-time legislators you are faced here with the problem of discouraging potentially good legislators because they cannot pursue their lawful calling. This might be one of the essential differences that a commission might take into consideration in formulating its standards. I have no easy answer right now. I know that from an ideal sense, all of us would agree that there should be a push toward the highest standards. From a practical point of view, I would have to agree with my predecessor here today in suggesting that we ought to get a look at the conceivable or actual consequences. For example, if we find here that as a result of placing too many strictures on part-time legislators concerning their lawful calling, it might weaken the quality of the Legislature. If that is true, it seems to me that the ethical standard ought to be carved out

to meet that situation, and it would be a very difficult problem of weighing the pros and cons and translating these pros and cons into terms that can be measured.

I agree with the distinguished counsel that the problem is one that must be faced by the agency considering the whole issue of conflict of interest, because you don't have one of the same consequences on the federal level with respect to full-time work as you do here on the legislative level, and this is one of the considerations of public policy that has to be taken in mind.

MR. YAUCH: I have no further questions.

SENATOR MURRAY: Counsel, if you have no further questions, the Commission has no further questions at this time, and we again wish, Professor, to express our extreme thanks to you. You have been a most helpful and authoritative witness, and we appreciate your coming down and we appreciate also Father Canavan's coming down this morning.

MR. YAUCH: Mr. Chairman, would you mind adding that we would appreciate the Professor taking back to Dean Tunks of Rutgers Law School our appreciation of his having made Professor Cohen available to us.

SENATOR MURRAY: I will do that, and we certainly do extend that thanks to him and also to the Dean of my own Alma Mater for making one of its own professors available to us this morning.

For the record, we will stand adjourned now. Are there any other witnesses, by the way, voluntary or otherwise? I know you have none, Counsel, but I thought there might be some in the chamber who might wish to testify. If not, we will stand adjourned until after Election at the call of the chair, but the Commission will agree before leaving today to executive

sessions that will be held and counsel will notify you before leaving the chamber today as to the date agreed upon.

The hearing stands adjourned.

( A D J O U R N E D )



A P P E N D I X    T O    H E A R I N G S

BEFORE

*M. J.*  
THE COMMISSION TO STUDY THE SUBJECT OF CONFLICTS IN  
THE PERFORMANCE OF PUBLIC DUTIES BY PERSONS HOLDING  
PUBLIC OFFICE, POSITION OR EMPLOYMENT, WITH THEIR  
PERSONAL, BUSINESS OR PROFESSIONAL INTERESTS - created  
by Senate Concurrent Resolution No. 18 (1956) and re-  
constituted by Senate Concurrent Resolution No. 9 (1957).

Held:  
Senate Chamber, State House,  
Trenton, New Jersey  
September 4, 1957  
September 16, 1957  
September 27, 1957  
October 21, 1957

Members of Commission:

Senator James F. Murray, Jr., Chairman  
Assemblyman Benjamin Franklin, III, Vice Chairman  
Louis P. Marciante  
James M. Keating  
Albert A. Marks, Jr.

Counsel, John H. Yauch, Jr., Esq.  
Associate Counsel - Daniel A. Degnan, Esq.

974.90  
E54 Copy 2  
1957.  
Appendix

SENATE, No. 38

STATE OF NEW JERSEY

INTRODUCED JANUARY 14, 1957

By Senator WADDINGTON

Referred to Committee on Judiciary

AN ACT establishing standards of conduct for State officers and employees concerning possible conflict between private interests and official duties.

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

1 1. State officers and employees must preserve at all times a moral and  
2 ethical standard above reproach and suspicion. Their private interest must  
3 never conflict with the discharge of their duties in the public interest. The  
4 maintenance of standards of conduct among State officers and employees  
5 worthy of their public trust is declared to be the object of this act.

1 2. "State officer and employee" as used in this act shall include any per-  
2 son acting as agent for or on behalf of the State.

3 "Transaction" as used in this act shall mean the purchase, lease or sale  
4 of any property or services, the deposit or investment of any funds, or the  
5 execution or assignment of any contract, and shall include any negotiations  
6 preliminary to any transaction as hereinabove defined.

1 3. No State officer or employee shall engage in any business, pro-  
2 fessional or other outside activity or interest which interferes with, hampers  
3 or impairs the independence of his judgment in the full and proper discharge  
4 of his duties in the public interest.

1 4. No State officer or employee shall use his office or position to secure  
2 unwarranted exemptions or privileges for himself or others.

1 5. No State officer or employee shall engage in any transaction as agent  
2 for or on behalf of the State with any business entity in which he, his  
3 spouse, or his blood relative closer in degree of relationship than first  
4 cousin has any direct or indirect financial interest.

1 6. No State officer or employee shall make or participate in the making  
2 of any decision, order, rule or regulation of any State agency involving or  
3 affecting any business entity in which he, his spouse or his blood relative  
4 closer in degree of relationship than first cousin has any direct or indirect  
5 financial interest.

1 7. No State officer or employee shall accept or solicit any gift or gra-  
2 tuity, whether or not in connection with the performance of his State duties,  
3 which is intended to influence or affect such performance or which is sub-  
4 ject to a reasonable suspicion that it may have that result in fact.

1 8. No State officer or employee nor any firm or association of which he  
2 is a member nor any corporation a substantial portion of the stock of which  
3 is owned or controlled by him shall sell any property or services to any  
4 person, firm, corporation or association which is licensed or whose rates are  
5 fixed by the State agency in which such officer or employee serves or is em-  
6 ployed.

1 9. No State officer or employee shall make any personal investment in  
2 any enterprise which he has reason to believe may be directly involved in or  
3 affected by any decision, order, rule or regulation to be made or issued by  
4 the State agency in which such officer or employee serves or is employed.

1 10. No State officer or employee shall by his conduct give reasonable  
2 basis for the impression that any person can improperly influence him or un-  
3 duly enjoy his favor in the performance of his State duties, or that he is  
4 affected by the kinship, rank, position or influence of any party or person or  
5 by his present or former association in any business enterprise with any  
6 person, contrary to the public interest, or that he is likely to be engaged in  
7 acts that are in violation of his responsibility for the proper discharge of  
8 his duties in the public interest.

1 11. This act shall take effect July 1, 1957.

Text of a statement to be presented by New Jersey State Bar Association Friday, September 27, 1957, at 10 A. M. before the Legislative Study Commission dealing with the subject of conflicts of interest in the performance of public duties by persons in public office or employment. The State Bar Association has drafted two model bills, one covering legislators and the other public employees. This statement pertains specifically to legislators. Press release time 10 A. M. Friday.

\* \* \*

A special Conflict of Interests committee of the New Jersey State Bar Association was constituted in May, 1956, to study the subject which is now occupying the attention of this committee. Two bills were drafted which have been submitted to your committee. Copies, in due course, will be supplied all members of the Legislature.

The State Bar Association's committee has reviewed testimony developed at your hearing on September 16, as reported in the press, pertaining to legislators in their personal and business relations with state agencies. With due deference to the opinions of critics as registered before this committee and in comments in the public press, we must nevertheless state that we find these criticisms unavailing, with our faith in the soundness of our proposals undiminished.

Nothing said so far can shake our conviction that, in a democracy, the citizenry is entitled to a guarantee that all decisions reached or actions taken by a state instrumentality are based wholly on merit, justice, equity and fair play. Stated another way, the public must be given the assurance there is no room in its State government for resort to influence, privilege or favoritism, whether open or covert.

We also believe in realism. We believe the ground rules for service in the Legislature cannot be left to an ambiguous code of ethics with vague sanctions. Rather, we believe these rules must be given the dignity, force and stature of codified law, with the penalty for infractions stated in explicit terms. Between a legislator and the public, there exists a fiduciary

relationship of the highest degree. The terms of such a trust must be clear and unequivocal, and provide sharp teeth for violation.

For many years members of the Legislature have represented third parties before state agencies. It would be wrong to impute unethical motives to these men, for they were merely following what time had made a standard practice. But now government has become so complex, with so many ramifications affecting industry and commerce, that the public interest demands that legislators pretty much wear only one hat. The bill proposed by the State Bar Association clearly shows when and where this hat must be worn and when and where it may be doffed for another. It provides legislators with a clear standard of conduct and equally clear guide lines.

The bill proposed by the State Bar Association should not be construed as impugning the integrity of the Legislature. Rather, it should be regarded as establishing a compact between legislators and the public. If our bill is enacted, a legislator, in effect, would say to the public: "I am fully aware of the strictures imposed on me as a member of the Legislature, and I willingly accept them as an integral part of the trust you impose in me."

The public would not be the sole beneficiary of this compact. It would serve also as a shield for our legislators, safeguarding them from possible attacks that they sought legislative service merely for personal advantage or gain. Moreover, protection would be provided for any state instrumentality concerned. It would be freed from pressure or influence and also possible accusations that its decisions or actions were improperly motivated. In other words, by specifying the ground rules, the bill proposed by the State Bar Association expressly defines the rights and obligations, as the case may be, of each party --- the public, the legislator, and the state instrumentality involved. This clarification, we maintain, is essential to good government.

Some critics of our bill say you cannot legislate morality. This is specious. The history of our law, in great part, is a record of society's achievement in formalizing or codifying ethical and moral concepts that have brought peace and order into human relationships. If you reduce the argument that you cannot legislate morality to its ridiculous conclusion, the Legislature should repeal the New Jersey Crimes Act as being the stuff that dreams are made of.

Other critics of our bill maintain the way to handle the conflict-of-interest problem is through the ballot box --- vote the rascal out. This is fine in theory but weak in practice. Only the big scandals become election issues. Scores of other cases, where the pressure and influence are subtle and insidious but, nevertheless, very much present, have a way of going wholly undetected, with the electorate left in blissful ignorance. The ballot box, moreover, is a slow weapon, available to the public only once every two or four years, as the case may be. For the breach of public trust involved, a fast, handy and simple remedy is needed --- and it is provided by the penalty clause in the State Bar Association's bill.

It is also argued that the restrictions and prohibitions in our bill would foreclose many fields of practice to attorney-legislators and others and, hence, considerably narrow the number of persons qualified and willing to serve in the Legislature. We reject this thesis as untenable. There is not now and never will be a dearth of outstanding candidates for seats in the Assembly or Senate if our proposals are enacted into law.

It should be borne in mind that the State Bar Association's bill was drafted by a large committee of lawyers wholly cognizant of the bill's pocket-book threat to their profession. Let us remember, too, that this bill was unanimously approved at the Association's annual meeting last May, which attracted a record-breaking number of New Jersey lawyers. Why, it may be asked,

should such a large assemblage of attorneys vigorously advocate proposed legislation with obvious economic disadvantages for their profession?

The answer is not difficult. These men believe that, in a democracy, the criterion should be the greatest good for the greatest number. They believe that guaranteeing the public fair play in government is vastly more important than preventing some economic discomfort for a relative few. They also believe that, despite the restrictions contained in the bill, there would be considerably more than enough attorneys and members of other callings and professions, who would be ready, able, and eager to seek legislative office. The spur would be the honor of the office, the esteem of the public, the opportunity to serve the State and, last but certainly not least, the \$5,000 annual salary.

We are dealing here with a complex problem. Experience shows it cannot be solved by good intentions or half-measures. It demands a forthright, realistic approach, which recognizes the truth of the old adage that one cannot serve two masters -- the public and a private client. We respectfully submit that the bill sponsored by the New Jersey State Bar Association fully resolves this problem of conflicts of interests.

Milton T. Lasher, President

John R. Kelly, First Vice-President

Richard L. Amster, Co-chairman

Eugene F. Hillery, Co-chairman

Conflict of Interests Committee

# NEW JERSEY STATE BAR ASSOCIATION

Legislation sponsored by the New Jersey State Bar Association

## BILL 1

An Act establishing standards of conduct for members of the Legislature in cases of conflict between private interests and official duties.

WHEREAS, it is part of the public policy of this State that members of the Legislature shall not act for or on behalf of persons, firms or corporations having interests adverse to the interests of the State in any matters involving the State of New Jersey, or disclose to anyone or use for personal benefit or advantage confidential information gained by reason of official position, therefore

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

1. No member of the Senate or General Assembly shall have an interest, either directly or indirectly, in any contract with the State, or any subdivision thereof, during his term of office or in any contract authorized by any law passed during the term for which he shall have been elected or within two (2) years after the expiration thereof. For the purposes of this paragraph, ownership of 2 (two) percent or less of the securities of any corporation shall not be construed to constitute an interest.

2. A member of the Legislature who has a personal or private interest in any measure or bill proposed or pending before the Legislature, shall publicly disclose the fact to

the House of which he is a member, and shall not vote thereon.

3. 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.

4. No member of the Legislature shall directly or indirectly accept employment or engage in any business, professional or political activity which will require him to disclose confidential information which he gained by reason of his official position or authority as a member of the Legislature, or in any way use such confidential information to further his personal interests, whether business, professional or political.

5. Any person convicted of violating this statute shall be guilty of a misdemeanor and in addition to the punishment prescribed for such offense shall be forever disqualified from holding any office or position of honor, trust or profit under this State.

OBJECTS: The purpose of this Bill is to define what constitutes conflict of interest and punish violations. It was prepared by a special committee of the New Jersey State Bar Association and approved at the Mid-Winter Meeting of the Association held in Asbury Park, New Jersey, December 14-15, 1956, with only one dissenting vote.

## NEW JERSEY STATE BAR ASSOCIATION

Legislation sponsored by the New Jersey State Bar Association

### BILL 2

A Bill to preserve independence of judgment in the exercise of official duties by employees of the State or agencies thereof; to prevent the use of official position for purposes of securing unwarranted privileges or exemptions; to prevent any course of conduct by employees of the State or agencies thereof that might cause violation of public trust; and to provide penalties for violation.

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

Section 1. Business or professional activities by State officers and employees, legislative employees, and officers of political parties.

Definitions: (a) As used in this section, the term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department, or similar instrumentality of the State of New Jersey by whatever name designated, now in existence or hereinafter to be created.

(b) The term "compensation" shall mean any money, thing of value, or financial benefit, to be conferred or promised, during or after service with any "state agency", or membership in the Legislature, in return for services rendered or to be rendered.

(c) The term "legislative employee" shall mean any officer or employee of the Legislature but shall not include members of the Legislature.

Section 2. No officer or employee of a state agency, or legislative employee, shall receive, or enter into, any \*agreement, express or implied, directly or indirectly, for compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency.

Section 3. No officer or employee of a state agency, or legislative employee, shall, except as a representative of the State or agency, make an appearance before any state agency, with or without compensation or promise of compensation, express or implied, directly or indirectly, in relation to any case, proceeding, application, or other matter with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in any way attempt to influence the outcome of any of the above listed proceedings.

Section 4. No officer or employee of a state agency, or legislative employee, nor firm or association of which such person is a member, nor corporation, five (5) percentum or more of the stock of which is owned or controlled, directly or indirectly by such person, or position of officer or director of which is held by such person, shall sell any goods or services having an aggregate

---

\* N.J.S.A. 2A:135-8 has similar provisions, but applying only to Freeholders, Municipal Officers, and Boards of Education.

value in excess of twenty-five dollars (\$25.00) per annum to any state agency, unless pursuant to an award or contract let after public notice and competitive bidding.

Section 5. No person who has served as an officer or employee of a state agency shall, within a period of two (2) years after the termination of such service or employment appear before such state agency or receive compensation for any services rendered, to include any and all lobbying, or public relations activities, on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which such person was directly or indirectly concerned during the period of his service or employment; provided, however, that nothing herein contained shall prohibit any state agency from adopting rules concerning practice before it by former officers or employees more restrictive than the requirements of this subdivision.

Section 6. No officer or de facto officer of any political party, while serving as such, shall be eligible to serve as a judge of any court of record, attorney general, assistant attorney general, prosecutor, or assistant prosecutor. As used in this subdivision, the term "party officer" shall mean a member of a national committee, officer or member of a state committee, or any comparable positions bearing different names or designations, or a county chairman of any political party.

Section 7. No officer or employee of a state agency or legislative employee shall accept employment or engage in any business, professional or political activity which will require him to disclose confidential information which he gained by reason of his official position or employment, or in any way use such confidential information to further his personal interests, whether business, professional, or political.

Section 8. No officer or employee of a state agency, or legislative employee, nor firm or association of which such person is a member, nor corporation of which such person is an officer or director, or of which five (5) percentum or more of the stock is owned or controlled directly or indirectly by said person, shall sell goods or services having an aggregate value in excess of twenty-five dollars (\$25.00) per annum to any person, firm, corporation or association which is annually licensed to do business or is regulated by any state agency.

Section 9. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and be punished as such.

OBJECTS: The purpose of this Bill is to define conflict of interest on the part of officers and employees of State agencies, Legislative employees, and officials of political parties and to punish violations. This Bill was prepared by a special committee of the New Jersey State Bar Association.



**State of New Jersey**  
**DEPARTMENT OF THE TREASURY**  
STATE HOUSE  
TRENTON 25

October 2, 1957

John H. Yauch, Jr., Esq.  
11 Commerce Street  
Newark 2, New Jersey

Dear Mr. Yauch:

As agreed when I appeared before the Legislative Committee on Conflict of Interest on September 16, I am attaching a draft of a proposed Code of Ethics within the Treasury Department. While this Code has not as yet been agreed upon, it has been under consideration for some time.

Chairman Murray also requested that I indicate my views with respect to the need for a check on possible conflicts of interest in the case of non-salaried advisory committee, commission and council members. While perhaps the usual Department questionnaire on the subject of conflict of interest could go to members of these bodies, I believe it must be recognized, because of the fact that they are functioning in an advisory capacity and to a large extent as a public service, that the same rules applicable to full-time, salaried employees could not be rigidly applied.

We do not believe it to be reasonable or practical to require a non-salaried member of an advisory committee to refrain from private remunerative employment which might possibly conflict with his official duties. It is probably reasonable, however, to expect such an official to refrain from voting upon or influencing his colleagues as to a question in which he does have a private interest.

The standards laid down in the recently decided case of Aldom v. Borough of Roseland, 42 N.J. Super 495 (Appellate Division 1956) might serve as a guide. Although that case dealt with municipal officers its principles suggest application as well to State officials.

-2-

Persons serving on such bodies without remuneration are rendering a valuable service to the State. Instances of matters coming before them for determination or recommendation in which there might be a conflict of interest would no doubt be few in number compared with the volume of work on which they act regularly and in the disposition of which there could be no possible conflict of interest. The purposes for which advisory groups are often created would be defeated if appointment of individuals experienced in the particular field were precluded.

Very truly yours,



Aaron K. Neeld  
State Treasurer

AKN/h  
Attchs.

A rough draft of a Code of Ethics is set forth below. In the event that a Code is adopted it should be subscribed to by all present personnel and by all new employees at the time of commencement of employment. Furthermore, every employee should be required periodically to submit a "Confidential Questionnaire" giving details of any outside employment and business and professional activities.

1. Definition. "Employee" shall mean any employee of the Division of Taxation in the Department of the Treasury.
2. Rule with respect to conflicts of interest. No employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.
3. Standards.
  - a. No employee should accept other employment or engage in any business or professional activity which tends to infringe upon the time that the employee is required to devote to the performance of his duties as a State employee.
  - b. No employee should accept other employment or engage in any business or professional activity which will impair his independence of judgment in the exercise of his official duties.
  - c. No employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.
  - d. No employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests or the personal interests of another.
  - e. No employee of a state agency should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
  - f. An employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
  - g. An employee should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.
  - h. An employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY

State House  
Trenton, 7

30 December 1954

CONFLICT OF INTEREST REGULATION

1. The following regulation is issued pursuant to the power vested in me as State Treasurer by N.J.R.S. 52:18A-30(Sec. d) and is intended to reduce to writing the standards already considered applicable and being observed by Treasury employees, and is issued in accordance with the general policy that State employees, in conformance with the high standard of conduct and ethics expected of them, should avoid placing themselves in a position in which there is a conflict, or in which there could appear to be a conflict, between self-interest and the interest of the State.

2. No employee of the Treasury shall engage in any business, professional or other outside activity or interest (a) tending to interfere with or hamper full and proper discharge of his or her duties as a State employee or (b) which could reasonably appear to do so.

3. No Treasury employee having any duty or responsibility in connection with the purchase, acquisition, investment, reinvestment, sale or other disposition, or administration, of any funds, securities or other property or services by the State or by any department, commission, authority, agency or instrumentality thereof shall transact any business with, or make, approve or authorize any transaction with, any close associate or with any corporation or other business entity in which such employee or a close associate is an officer or employee or in any other way interested. In case an employee finds himself in the sort of situation hereby prohibited, he should report the facts to his superior and be relieved from further responsibility in connection with the transaction in question.

4. For the purposes of this regulation, a close associate is defined as (a) a husband or wife, or (b) a blood relative closer than a first cousin or (c) any other person, whether or not a relative by blood or marriage, with whom such a relationship exists as to make likely a conflict between the interest of the Treasury employee and the interest of the State.

/s/ Archibald S. Alexander  
Archibald S. Alexander  
State Treasurer

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY

State House  
Trenton, 7

July 2, 1956

TO ALL EMPLOYEES  
DEPARTMENT OF THE TREASURY

SUBJECT: Outside Employment and Business activities

Most of you will recall that on December 30, 1954 State Treasurer Alexander issued a "Conflict of Interest Regulation", a copy of which is attached, the purpose of which was to define for the benefit of employees of the Department of the Treasury standards of conduct already considered applicable and being observed. The policy is there stated that no employee of the Treasury Department shall engage in any business, professional or other outside activity (a) tending to interfere with or hamper full and proper discharge of his or her duties as a State employee or (b) which could reasonably appear to do so.

It does not follow from this regulation that an officer or employee of this Department may not properly supplement his income from the State by outside employment or business activity when there is no possibility of such a conflict. But it will be apparent that an officer or employee is not the person to pass on his own case.

For these reasons each full-time officer and employee of this Department is asked to execute the attached questionnaire. The answers will be considered confidential. Completed questionnaires should be submitted, in the case of those at or below bureau level, to the Bureau head who in turn is asked to pass them on to the Director of the applicable Division. Each Division Director is requested to submit all completed questionnaires, with his comment and recommendation, to Mr. Hardy of the Administrative Division, by Friday, July 27.

It is my intention to discuss with each Division Director the cases in his Division which may involve conflicts.

Respecting Question No. 3, there is not necessarily any objection to service or employment with a political subdivision of the State or any agency or instrumentality thereof. Nevertheless, it is believed appropriate that any such connection should be disclosed.

Respecting Question No. 6, paragraph 3 of the regulation prohibits any Treasury employee having certain specified responsibilities from acting on behalf of the State in any transaction with a close associate or with any corporation or other business entity in which such employee or close associate is an officer or employee or in any other way interested. Under the regulation the employee who finds himself in the sort of situation thereby prohibited is to report the facts to his superior and be relieved from further responsibility in connection with the transaction in question.

/s/ Robert L. Finley  
Robert L. Finley

July 2, 1956

DEPARTMENT OF THE TREASURY  
CONFIDENTIAL QUESTIONNAIRE  
OUTSIDE EMPLOYMENT AND BUSINESS ACTIVITIES

(To be executed by all full-time officers  
and employees of the Department of the Treasury)

NAME:

DIVISION:

BUREAU:

1. Are you employed by or rendering service to any individual or business organization:  
YES \_\_\_\_\_ NO \_\_\_\_\_
2. Are you engaged in any business or professional activity either alone or with others?  
YES \_\_\_\_\_ NO \_\_\_\_\_
3. Do you hold any elective or appointive position in or are you employed or rendering any service to any political sub-division of the State of New Jersey or any agency or instrumentality thereof?  
YES \_\_\_\_\_ NO \_\_\_\_\_

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS YES,  
PLEASE ANSWER QUESTIONS 4 AND 5.

4. What is the name and address of the individual, business organization, business or professional activity, or political sub-division or agency or instrumentality thereof?  
\_\_\_\_\_  
\_\_\_\_\_

5. Briefly, what does your service or position consist of and what is the approximate number of hours required each week? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE ANSWER QUESTION 6.

6. Do you have any duty or responsibility in connection with the purchase, acquisition, investment, reinvestment, sale or other disposition, or administration, of any funds, securities or other property or services by the State or by any department, commission, authority, agency or instrumentality thereof?  
YES \_\_\_\_\_ NO \_\_\_\_\_

IF THE ANSWER TO QUESTION 6 IS YES, PLEASE  
ANSWER QUESTION 7.

7. Have you since January 1, 1956 transacted any business with, or made, approved or authorized any transaction with, any close associate\* or with any corporation or other business entity in which you or your close associate is an officer or employee or in any other way interested?  
YES \_\_\_\_\_ NO \_\_\_\_\_

IF THE ANSWER TO QUESTION 7 IS YES, PLEASE  
ANSWER QUESTION 8

8. Have you reported such facts to your superior? YES \_\_\_\_\_ NO \_\_\_\_\_

DATE:

\_\_\_\_\_  
(Signature of Employee)

\* For definition of "close associate", see paragraph 4 of attached "Conflict of Interest Regulation".

July 2, 1956

DEPARTMENT OF THE TREASURY

CONFIDENTIAL QUESTIONNAIRE  
OUTSIDE EMPLOYMENT AND BUSINESS ACTIVITIES

(To be executed by all full-time officers  
and employees of the Department of the Treasury)

NAME:

DIVISION:

BUREAU:

1. Are you employed by or rendering service to any individual or business organization:

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Are you engaged in any business or professional activity either alone or with others?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Do you hold any elective or appointive position in or are you employed or rendering any service to any political sub-division of the State of New Jersey or any agency or instrumentality thereof?

YES \_\_\_\_\_ NO \_\_\_\_\_

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS YES,  
PLEASE ANSWER QUESTIONS 4 AND 5.

4. What is the name and address of the individual, business organization, business or professional activity, or political sub-division or agency or instrumentality thereof?

\_\_\_\_\_  
\_\_\_\_\_

5. Briefly, what does your service or position consist of and what is the approximate number of hours required each week?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE ANSWER QUESTION 6.

6. Do you have any duty or responsibility in connection with the purchase, acquisition, investment, reinvestment, sale or other disposition, or administration, of any funds, securities or other property or services by the State or by any department, commission, authority, agency or instrumentality thereof?

YES \_\_\_\_\_ NO \_\_\_\_\_

IF THE ANSWER TO QUESTION 6 IS YES, PLEASE  
ANSWER QUESTION 7.

7. Have you since January 1, 1956 transacted any business with, or made, approved or authorized any transaction with, any close associate\* or with any corporation or other business entity in which you or your close associate is an officer or employee or in any other way interested?

YES \_\_\_\_\_ NO \_\_\_\_\_

IF THE ANSWER TO QUESTION 7 IS YES, PLEASE  
ANSWER QUESTION 8

8. Have you reported such facts to your superior? YES \_\_\_\_\_ NO \_\_\_\_\_

DATE:

\_\_\_\_\_  
(Signature of Employee)

\* For definition of "close associate", see paragraph 4 of attached "Conflict of Interest Regulation".

CODE OF REGULATIONS FOR DISTRICT SUPERVISORS  
AND OTHER EMPLOYEES OF THE NEW JERSEY TRANSFER  
INHERITANCE TAX BUREAU.

1. No District Supervisor, or other employee, of the Transfer Inheritance Tax Bureau who is a layman shall practice law.
2. No District Supervisor, or other employee, shall serve as an executor or administrator of an estate unless he first files with the Bureau an affidavit explaining the reasons for his having been named as such and secures the written permission of the Bureau.
3. No District Supervisor, or other employee, shall act as the appraiser of an estate for any person, firm or corporation unless he first files with the Bureau an affidavit explaining the reasons for his having been retained as such and secure the written permission of the Bureau.
4. Except as may be required to assist the public in the discharge of his official duties under the direction of the Inheritance Tax Bureau, no District Supervisor, or other employee, shall prepare New Jersey inheritance and estate tax returns, inventories, accounts or other estate instruments, or participate in any way in the administration of an estate unless he first files with the Bureau an affidavit by the executor, administrator or beneficiary seeking to engage his services certifying the reasons prompting the desired engagement of the particular employee, and an affidavit by the District Supervisor, or other employee, setting forth the circumstances which caused his desired employment by the estate, and is granted written permission by the Bureau.
5. No District Supervisor, or other employee, shall use his position to solicit any kind of business. With respect to legal work, this prohibition shall also include the solicitation of legal work for any person or persons, and shall further preclude the reference of such legal work to any other person or persons.
6. No District Supervisor, or other employee, shall associate himself with any other person in order to evade the proscriptions contained in these regulations and any fee-sharing arrangement or the like will be deemed prima facie evidence of a collusive arrangement to evade these regulations.
7. No District Supervisor, or other employee, shall refer estate or related legal matters to an attorney, accountant, person or corporation nor shall he make any recommendation in connection therewith.
8. No District Supervisor, or other employee, shall accept an inheritance tax report on the estate of a resident decedent from or negotiate with any person with regard to resident decedent estate matters unless said estate is represented by:-

- (a) An Attorney at Law of the State of New Jersey, or
- (b) the personal representative of the estate, or
- (c) an heir at law, next of kin, grantee, transferee, legatee or devisee of the decedent.

The provisions of this paragraph may be waived by the State Supervisor where in his judgment a strict adherence thereto would jeopardize the collection of any tax due or the closing of the inheritance tax proceeding.

9. The foregoing regulations shall apply to every person in the employ or subject to the control of the District Supervisor and to every employee of the Bureau.

"Employee" as used in this regulation shall mean and include all persons directly employed by the Bureau as well as all persons employed by District Supervisors.

10. Violation of any of the foregoing regulations may constitute ground for dismissal.

Filed 12/2/55.

C  
O  
P  
Y

C  
O  
P  
Y

Letter forwarded to all Medical Examiners on the attached list.

CC: Ned J. Parsekian, Deputy Director  
Div. of Workmen's Compensation  
J. Lyman Brown, Deputy Commissioner

1035 Parkway Avenue  
Trenton, New Jersey

March 7, 1956

Dear Dr.

The Attorney General of the State of New Jersey issued a formal opinion on January 23, 1956, stating:

"\*\*\*\* we are of the opinion that the interests of the State and the interests of insurance companies who insure respondents in workmen's compensation cases are conflicting. A State medical examiner in the Division of Workmen's Compensation, who also examined workmen's compensation claimants on behalf of insurance companies has breached his duty of undivided loyalty to the State and may be subject to disciplinary action."

I have information that some State medical examiners of the Division of Workmen's Compensation receive money from insurance companies for examination of workmen's compensation claimants. This constitutes an obvious conflict of interest between such doctor's public duty and his private interest.

As was stated in the Attorney General's opinion, the State medical examiner has the duty to report impartially to the referee, to aid the referee's determination. Previous participation by him in the same case in the role of an insurance company examiner would seriously effect his ability to form an independent and impartial judgment. Even if he were to disqualify himself in every case in which he has previously acted, his ability to perform his duties properly would be impeded by being retained by an insurance company writing workmen's compensation insurance.

C  
O  
P  
Y

(EXHIBIT #5 - Page 2)

C  
O  
P  
Y

Dr.

- 2 -

March 7, 1956

I must ask you to report to me in writing before two weeks have elapsed from the date of this letter; either

1. That you have not, or are not receiving such payments from insurance companies for your professional services.
2. That, although you had been receiving such payments, you have ceased receiving such payments as of the date of your report to me; or
3. That you are receiving such payments.

In the latter event, I will accept your resignation as medical examiner for the Division of Workmen's Compensation effective immediately.

Sincerely yours,

Carl Holderman  
Commissioner

CH:MD1

C  
O  
P  
Y

(EXHIBIT #5 - Page 3)

C  
O  
P  
Y

STATE OF NEW JERSEY  
DEPARTMENT OF LABOR AND INDUSTRY  
DIVISION OF WORKMEN'S COMPENSATION  
NED J. PARSEKIAN, DIRECTOR

29 East Front Street  
Trenton 25, New Jersey

ADMINISTRATIVE DIRECTIVE NO. 3

SEPTEMBER TERM, 1956

SUBJECT: Conflict of Interests - State Medical Examiners

No Medical Examiner of the Division of Workmen's Compensation shall treat any individual for any accidental injury or occupational injury or disease at the request of an insurance company or any employer or self-insured, except in an emergency. If any individual is so treated, the Medical Examiner shall promptly report the name of all parties, diagnosis and the fee charged to the Director of the Division and the Chief Medical Examiner.

Under no circumstances shall any Medical Examiner of the Division of Workmen's Compensation examine any individual for any accidental injury or any occupational injury or disease at the request of an insurance company or any employer or self-insured for the purpose of evaluating the nature or extent of the disability, except in his official capacity in the services of the State of New Jersey.

Ned J. Parsekian, Director  
Division of Workmen's Compensation

NJP:k

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY

January 23, 1956

Honorable Carl Holderman  
Commissioner of Labor and Industry  
1035 Parkway Avenue  
Trenton, New Jersey

FORMAL OPINION NO. 4 (1956)

Dear Commissioner Holderman:

You have requested our opinion as to whether there is a conflict of interest between a physician's status as an insurance company examiner and as a medical examiner in the Division of Workmen's Compensation.

Your supplemental letter sets forth the following illustrative case:

"Mr. A is injured in a plant and is referred to Dr. B, who is retained by the insurance company, for examination as to the extent of his injuries. Dr. B later during informal proceedings in our Workmen's Compensation court, acting as a State employed Medical Examiner, examines Mr. A and recommends to the Referee who is presiding at the hearing, his diagnosis as to the extent of Mr. A's injuries."

Under the facts which you present, we are of the opinion that the interests of the state and the interests of insurance companies who insure respondents in workmen's compensation cases are conflicting. A state medical examiner in the Division of Workmen's Compensation who also examines workmen's compensation claimants on behalf of insurance companies has breached his duty of undivided loyalty to the state and may be subject to disciplinary action.

Faithful service is required by every employee.

"The law implies an agreement on the part of the servant or employee to faithfully serve and be regardful of the interest of his employer during the term of his service."  
35 Am. Jur. 82.

If a state employee engages in outside employment, he must take care that he does nothing which will conflict with the state's interest or impede the effective performance of his official duties. See: Attorney General's Memorandum Opinion to Commissioner Palmer dated February 1, 1955; 56 C.J.S. 70; note 13 A.L.R. 909.

Informal hearings are held by the Division of Workman's Compensation in accordance with Section I of its rules. Rules No. 2 and 3 provide as follows:

"The State doctor shall examine the claimant and report his opinion of the extent of disability to the Referee for his consideration.

On the date of an informal hearing, the claimant or employer shall, on demand of the Referee, present to the State doctor at the time and place of the hearing, the report or reports of the attending physician or physicians, including x-rays, reports of x-rays and laboratory tests."

It thus appears that the state medical examiner has the duty to report impartially to the Referee to aid in the Referee's determination. Previous participation by him in the same case in the role of an insurance company examiner would seriously affect his ability to form an independent and impartial judgment. Even if he were to disqualify himself in every case in which he has previously acted, his ability to perform his duties properly would be impeded by being retained by an insurance company writing workmen's compensation insurance.

As to formal hearings, Rule 22 prohibits a state medical examiner from testifying for either side. This rule recognizes the impropriety of a doctor's participating on behalf of one of the litigants. The policy underlying a similar rule formerly in effect has been the subject of judicial comment in two cases.

In Harrison v. Garlitti, 120 N.J.L. 64, 65 (Sup. Ct. 1938) it was said,

"The effect of such a rule should be to keep the testimony and conclusions of such witnesses entirely impartial. If doctors, paid by the state to assist in the just administration of this important bureau, may be retained by either side in a contested case, they would soon come to be at least under the suspicion of leaning towards the side paying for their services. Public policy would seem to demand such a rule, and so we find no error here."

In Frisby v. Good Humor Corp., (not officially reported) 17 N.J. Misc. 277, 278 (Com. Pl. Essex Co. 1939) the court discussed the case of Harrison v. Garlitti, supra, saying

"But this case, as its opinion clearly indicates applied to far different facts, i.e., in forbidding state doctors to 'be retained by either side' for the obvious reason that they would then 'soon come to be at least under the suspicion of leaning toward the side paying for their services.' Obviously, the Supreme Court reads the rule as applicable to the facts before it, i.e., the preferred testimony of the state doctor as an expert opinion witness, whose opinion might well be swayed by his retention as an expert and the payment for his services. For this swayed testimony to come in fact from the lips of one occupying the influential position of a state doctor, would clearly be against 'public policy.' But by the same token, the Supreme Court did not hold this rule to apply to a mere fact witness, as here. \* \* \*"

Both opinions indicate the judicial attitude toward the retention of state doctors by litigants or insurers. It is clearly against public policy.

In Latorre's case, 302 Mass. 24, 18 N.E. 2d 357 (Sup. Ct. Mass. 1938) a physician who had made an x-ray examination of an employee at the request of the employee's physician was held not to qualify as impartial and thus not competent to serve as one of three industrial disease referees in a hearing where the employee examined by him was the claimant. At 18 N.E. 2d 358 the court said,

"Such a circumstance was utterly inconsistent with the requirements of plain justice and the demands of a full and fair hearing of an important issue of fact. \* \* \* It may be that the physician was constant in his belief that the employee had the disease in question and that he was not conscious of any bias or prejudice; but are occupying a position, the duties of which in some respects resemble judicial functions, must avoid even the appearances of partiality or interest."

It is generally recognized that an expert who has been engaged by one of the litigants to a controversy does not possess complete objectivity. Samuel R. Gerber, M.D. in an article entitled Expert Medical Testimony and the Medical Expert appearing in Physician in the Court Room, (Western Reserve U. Press, 1954) at page 65 says;

"Under modern court procedures there are two factors which tend to thwart full and completely objective testimony by the expert witness. One factor is that at the present time in this country each litigant engages one or more experts to support his side of the question and to attempt to impress the judge and jury with the correctness of his stand, disregarding objectivity. If the expert were chosen by the court or a commission were set up for the purpose, it would obviate the natural feeling that the expert is, one might say, on one team. Such sentiment often leads to an unconscious bias or mental block on the part of the expert who dislikes to "let down" the side who engaged him. \* \* \*"

The importance of impartiality and objectivity on the part of medical examiners whose function it is to advise workmen's compensation officials has been discussed in Yerion, Expert Medical Testimony in Compensation Cases, 2 Law and Contemporary Problems 476 (1935). At page 487 the author comments as follows:

". . . In solving any problem connected with the administration of justice, there must be competent and honest officials to administer the law; and where compensation officials are the agents in securing impartial testimony, they must always be on the alert to keep off the list of impartial examiners those whose practice is derived in the main either from the insurance companies or from compensation claimants. While this may seem to be a large order, it is not impossible of accomplishment even under the existing systems of procedure. Where this is done and where sufficient power and funds are granted to obtain disinterested medical testimony when needed, most of the evils popularly associated with expert medical testimony will be overcome or greatly lessened.\*\*\*"

For the foregoing reasons we advise you that the engagement or association of state medical examiners with insurance companies or affiliates of companies which write workmen's compensation insurance should be prohibited. This may be accomplished by regulation. It need not be a part of the rules of practice before the agency but could be a part of the internal regulations of the division.

Yours very truly,

GROVER C. RICHMAN, JR.  
Attorney General

By: /s/ John F. Crane  
John F. Crane



State of New Jersey --- Department of Labor and Industry  
**DIVISION OF EMPLOYMENT SECURITY**

**Office of the Director**

Trenton

No. EX-24

To All Employees

DATE: January 19, 1956

O R D E R

RESPECTING OUTSIDE BUSINESS ACTIVITIES AND EMPLOYMENTS

The effective administration of the Unemployment Compensation Law and the Temporary Disability Benefits Law depends to a large measure on the confidence the citizens of the State repose in the individuals who perform services for the Division and aid in the administration of those laws. The reputation of the Division can be maintained only if such individuals obey not only the literal requirements of State laws and orders governing their conduct, but by their conduct support at all times the moral and ethical principles underlying those laws and the regulations promulgated thereunder and by their actions bring credit upon the Division and the State service.

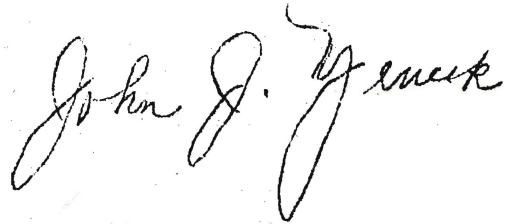
For these reasons it is hereby ordered that no regular full-time employee of this Division shall engage in any business activity or employment if such business activity or employment: (1) Will be in conflict with the best interests of the Division of Employment Security; (2) Will interfere with the performance of the duties of his public employment; (3) Will require the use, or appear to require the use of any information obtained in connection with his duties which is not available to the public; or (4) Reasonably might be construed by the public as official action.

The following services shall be construed to fall within the prohibition set forth in the preceding paragraph: The performance of any bookkeeping or accounting work or the preparation of any types of tax returns for employing units for gain or compensation; excluding such employing units which are non-profit organizations exempted from the Unemployment Compensation Law of New Jersey by the provisions of Sections 19(i)(7)(F) and 19(i)(7)(L).

The preparation of articles, papers, and other material by an employee on his own time for outside publication, which does not make use of data obtained through his employment and not available to the public, shall not fall within the prohibition. Any articles, papers, and other material prepared by an employee as aforementioned shall not identify the employee with the Division of Employment Security unless the Director gives his prior approval to the use of such identification; and any articles, papers, or other material prepared by an employee in the course of his official duties shall not, under any circumstances, be used by him for private gain.

Every business activity or employment of an employee shall be disclosed, in writing, to the Director by the employee, and by his superiors if they have knowledge of such business activity or employment.

It is further ordered that: (1) No employee shall accept or agree to accept, directly or indirectly, any assistance, gift, loan, free service, or other item of value, from any outside person or organization, if it is intended, or could be construed, to influence the employee in the performance of his duties, or reward him for something done by him in the performance of his duties. (This, however, shall not prevent an employee from accepting an award publicly bestowed on the employee for outstanding achievement in State service or for participating in the State Employees Award Program.); (2) No employee shall make, directly or indirectly, any investments based upon information or data obtained by or through his employment that is not available to the public; and (3) No employee shall divulge or discuss any information or data which can be used by others in pending litigation or which the employee knows or should know will be used in potential litigation involving the Division, except as permitted by law.

A handwritten signature in cursive script, reading "John J. Yencik". The signature is written in dark ink and is positioned to the right of the date.

Dated: January 19, 1956



State of New Jersey -- Department of Labor and Industry  
**DIVISION OF EMPLOYMENT SECURITY**

**Office of the Director**

Trenton

Supplement to No. EX-24

No. EX-24A

To All Employees:

Date: July 10, 1956

CONFLICT OF INTEREST QUESTIONNAIRE

RESPECTING OUTSIDE BUSINESS ACTIVITIES AND EMPLOYMENTS

The policy on outside business activities and employments was announced in an Order dated January 19, 1956, Bulletin No. EX-24, from the Office of the Director. Because of increasing emphasis being placed on this matter by the Bureau of Employment Security, this Bulletin and the attached Questionnaire are being issued to further implement the policy established in Bulletin No. EX-24.

A. Establishment of Board

There is hereby established a "Conflict of Interest Board", to which I have delegated the authority of decision and the membership of which shall comprise:

Mr. Frank T. Judge, Chairman  
Mr. Joseph F. McCarthy, Member and Executive Secretary  
Mr. John J. Scanlon, Member

B. Conflict of Interest Questionnaire (Form DES-2)

This form must be completed by every employee of this Division in the increment ranges of \$180 and over, whether or not engaged in any outside business activities or employments. Any such employee not so engaged will fill in only Items 1 through 9 and sign the certificate in Item 21

and sign the form. The copies shall then be routed as above, except that the employee's signed acknowledgment of the decision is not required.

E. Action by the Employee

Upon receipt of a decision that certain outside business activities or employments are considered a "conflict of interest" and must be discontinued or modified, the employee, upon termination or modification of such activities or employments, shall notify the Conflict of Interest Board in writing, through channels, of such termination or modification.

F. Future Activities or Employments

After a questionnaire has been submitted, any future business activities or employments subsequently contemplated shall be reported through channels to the Conflict of Interest Board on a new questionnaire for review and decision before engaging in such activity or accepting such employment. In these cases, it shall be the sole responsibility of each individual employee to submit additional questionnaires on his own initiative without a request being made therefor. Additional sets of Form DES-2 may be obtained from the Personnel Office.

G. Due Date

Questionnaires from all employees of this Division presently in the increment ranges of \$180 and over shall be submitted through channels to the Conflict of Interest Board not later than July 31, 1956.

  
John J. Yencik

Attachment: Form DES-2  
(In Triplicate)

State of New Jersey  
Department of Labor and Industry  
DIVISION OF EMPLOYMENT SECURITY

(6-56)

Form DES-2

**CONFLICT OF INTEREST QUESTIONNAIRE**

IF MORE SPACE IS REQUIRED, CONTINUE THE ENTRIES ON PLAIN WHITE PAPER, LISTING THE ITEM NUMBERS WHICH ARE CONTINUED

1. Name	2. Employee No.	3. Social Security Number
4. Residence Address	5. Address of Official Station	
6. Section and Bureau in which employed	7. Payroll Title	8. Salary Range

9. Are you employed, self-employed, or engaged in any business, trade or profession outside this agency?  
(If "NO", sign certificate and disregard Intervening Items.)  Yes  No

10. Describe in detail the nature of your outside work. If you are employed, also include name and address of employer(s).

11. Are you self-employed?  Yes  No

12. If "YES" give type of activity and trade name, if any.

13. Are you subject to self-employment tax?  Yes  No

14. Do you have an office for your self-employment?  Yes  No

15. Do you do accounting, record keeping or tax work for employers?  Yes  No

16. If 15 is marked "YES" check appropriate blocks: Social Security tax (OASI)  Yes  No Federal Income taxes  Yes  No Unemployment Insurance taxes  Yes  No Accounting or record keeping  Yes  No

17. List New Jersey registration numbers and names of employers for whom records are kept or for whom reports are prepared.

18. Does your name appear on the payroll of any of the above employers?  
If "YES" indicate which employers by placing check mark (✓) after applicable names shown in Item 17.  Yes  No

19. Indicate the extent of your outside activities:  
Number of hours per day? ..... Which hours? ..... Number of days per week? .....

20. Remarks

21. Certificate:

I hereby certify that this questionnaire contains no misstatements or willful omission of material fact. Before I accept employment or engage in any business activity outside this agency at any future date, whether or not for remuneration or personal gain, I will submit a complete new questionnaire for the decision of the Conflict of Interest Board.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Employee

22. Immediate superior's comment (if any):

\_\_\_\_\_  
Signature of Employee's Immediate Superior

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**DECISION OF CONFLICT OF INTEREST BOARD**

23.  No outside activities indicated

24.  No conflict of interest indicated based on information given in this questionnaire.

25.  You are hereby directed to discontinue the following employment or activities

26.  You are hereby directed to modify the following employment or activities to the extent indicated below:

27.  Other directive

28.  Submit a letter to this Board, through channels, as soon as possible, but not later than \_\_\_\_\_ 19 \_\_\_\_\_ indicate whether you have complied with the above directives (Items 25, 26 and 27)

29. REMARKS:

30. Official Signatures:

\_\_\_\_\_ Date

\_\_\_\_\_ Chairman

\_\_\_\_\_ Member and Executive Secretary

\_\_\_\_\_ Member

31. Employee's acknowledgment:

I have read and understand the decision given by the Conflict of Interest Board.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of Employee

To: All Employees - Board of Mediation

March 15, 1956

O R D E R

RESPECTING OUTSIDE BUSINESS ACTIVITIES AND EMPLOYMENTS

The effective administration of the Board of Mediation and the Department of Labor and Industry depends to a large measure on the confidence the citizens of the State repose in the individuals who perform services for the Board and the Department and aid in the administration of its laws. The reputation of the Board can be maintained only if such individuals obey not only the literal requirements of State laws and orders governing their conduct, but by their conduct, support at all times the moral and ethical principles underlying those laws and the regulations promulgated thereunder and by their actions bring credit upon the Board, the Department and the State service.

For these reasons it is hereby ordered that no regular full-time employee of this Board shall engage in any business activity or employment if such business activity or employment: (1) will be in conflict with the best interests of the Board of Mediation; (2) will interfere with the performance of the duties of his public employment; (3) will require the use, or appear to require the use of any information obtained in connection with his duties which is not available to the public; or (4) reasonably might be construed by the public as official action.

The preparation of articles, papers, and other material by an employee on his own time for outside publication, which does not make use of data obtained through his employment and not available to the public, shall not fall within the prohibition. Any articles, papers, and other material prepared by an employee as aforementioned shall not identify the employee with the Board of Mediation or the Department of Labor and Industry unless the Commissioner gives his prior approval to the use of such identification; and any articles, papers, or other material prepared by an employee in the course of his official duties shall not, under any circumstances, be used by him for private gain.

Every business activity or employment of an employee shall be disclosed, in writing, to the Commissioner by the employee, and by his superiors if they have knowledge of such business activity or employment.

It is further ordered that: (1) no employee shall accept or agree to accept, directly or indirectly, any assistance, gift, loan, free service, or other item of value, from any outside person or organization, if it is intended, or could be construed, to influence the employee in the performance of his duties, or reward him for something done by him in the performance of his duties. (This, however, shall not prevent an employee from accepting an award publicly bestowed on the employee for outstanding achievement in State service or for participating in the State Employees Award Program.); (2) no employee shall make, directly or indirectly, any investments based upon information or data obtained by or through his employment that is not available to the public; and (3) no employee shall divulge or discuss any information or data which can be used by others in pending litigation or which the employee knows or should know will be used in potential litigation involving the Board or the Department, except as permitted by law.

J. L. Brown  
Deputy Commissioner.

STATE HIGHWAY DEPARTMENT - October 30, 1957

NO HIGHWAY EMPLOYEE MAY:-

1. Work for a contractor.
2. Be hired as a Municipal Engineer or Consultant to Municipalities.
3. Serve in any capacity with any of our sources of supply.
4. Have any interest in any service or commodity organization with which we do business.
5. Accept gratuities or gifts in any period of the year.
6. Activate his Real Estate Brokerage license, if he holds one, while he is an employee of the Department.

There are attached copies of the 1954, 1955 and 1956 Notice that went to all employees, as well as some 900 contractors within the administrative list and some 600 contractors carried on the Projects Division list.

Attached is copy of Notice issued in 1954 to all Division Heads for the guidance of all of their employees - this having to do with service to municipalities and counties.

Attached is copy of Questionnaire issued in 1956 to all employees. The response was almost negligible and, of course, we were not in a position to force the matter any further.

In the early part of the year 1955 we were in contact with the Department of Law and Public Safety to get an opinion re: outside employment. Should you wish to pursue this angle, possibly you might wish to make a request to the Attorney General for such an opinion.

(EXHIBIT #6 - Page 2)

ORDERS, INSTRUCTIONS AND  
REGULATIONS

IN REPLY PLEASE REFER TO



**State of New Jersey**  
**STATE HIGHWAY DEPARTMENT**  
DWIGHT R. G. PALMER, COMMISSIONER  
TRENTON 25

December 17  
19 56

TO YOU - MY ASSOCIATES:

Again I request your cooperation at this season of the year.

Under no circumstances accept any gifts, gratuities or entertainment from those with whom we have business relations.

Your self respect and the department's character are too important to be placed in jeopardy by any untoward act on the part of any of us. Should you, prior to or subsequent to this memorandum, receive any gifts, graciously return them to the donors.

May you and yours have a Happy Holiday Season.

(Signed) D. R. G. Palmer

Dwight R. G. Palmer  
Commissioner

June 21, 1956

FROM: OFFICE OF PERSONNEL

TO: ALL EMPLOYEES

There was introduced in the Senate a Concurrent Resolution creating a legislative commission to study the subject of conflicts in the performance of public duties by persons holding public office, position or employment, with their personal, business or professional interests, and prescribing certain powers and duties to this Committee.

It is generally understood that among all State employees a large percentage are gainfully employed in jobs outside of State employment over weekends, evenings and holidays, to the extent that a quick estimate made within this department shows about 30% of our employees gainfully employed after the normal working hours either on a salary or a fee basis.

In order that we may anticipate the Senate Resolution, please submit to this office the attached questionnaire duly executed.

Please return not later than June 28, in a sealed envelope marked "Personal."

-----  
This form will be returned by only those individuals engaged in gainful pursuits outside the department.

TO: Mr. Joseph A. Combs  
Office of Personnel

Name:

Title:

Bureau:

Firms, companies or individuals presently employed by, or self-employed:

1.

2.

Brief Description of duties performed:

If you have no objection, and to complete the survey, kindly indicate annual or monthly income derived:

(EXHIBIT #6 - Page 4)

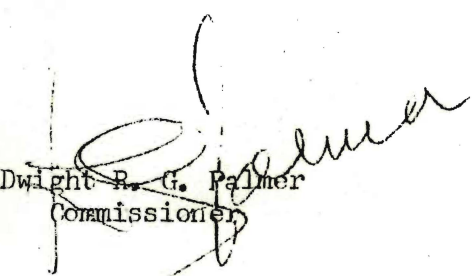
NEW JERSEY  
STATE HIGHWAY DEPARTMENT  
TRENTON

December 15  
19 55

To All Employees of the State Highway Department:

As the Holiday Season again approaches I should like to remind you that the receipt of gifts or special courtesies from contractors, material suppliers, or any other agency selling services or commodities to the Highway Department, is inconsistent with our policy of maintaining our independence without which you or I cannot render unprejudiced and loyal service to the Department and the State of New Jersey.

A copy of this reminder will go to each contractor and material supplier. Last year these people I understand showed admirable respect for our position and we are again requesting their complete cooperation with the department's policy.

  
Dwight R. G. Palmer  
Commissioner

STATE HIGHWAY DEPARTMENT

November 19, 1954

To all Division Heads:

Because an employee has raised the question of propriety of his serving both the State and a Municipality, we have taken this opportunity for the guidance of our employees to restate a previously established policy on this subject.

"Employees of this Department may not accept employment with Municipalities or Counties or other employment which entails negotiations with officials of this Department. Such employment will be construed as improper."

Dwight R.G. Palmer  
Commissioner

NEW JERSEY  
STATE HIGHWAY DEPARTMENT  
TRENTON

November 15  
11 9 54

MEMORANDUM TO ALL EMPLOYEES  
STATE HIGHWAY DEPARTMENT

In prior years it may have been customary for certain of our people to be the recipients of gifts or special courtesies from contractors or purveyors of material preceding or during the Holiday Seasons.

In my capacity, as Commissioner, I request each of you, not only to refuse for yourself and family any such "favors," but to return to the sender any receipts of such character.

Copy of this directive is being sent to all contractors and suppliers of services and materials with the earnest request that they conform to our Department's aforementioned expressed policy.

/s/ D. PALMER  
Dwight R. G. Palmer  
Commissioner

NEW JERSEY STATE CHAMBER OF COMMERCE

54 Park Place  
Newark 2, New Jersey

November 22, 1957

TO: Legislative Commission on Conflict of Interest  
State House  
Trenton, New Jersey

Gentlemen:

The problem of conflict of interest of public officials in the performance of their public duties, which your Commission is now studying, is a subject of deep concern to the New Jersey State Chamber of Commerce and the business interests in New Jersey which it represents.

To define what is morally good conduct in the exceedingly broad field of public life where the facets of personal conduct are so varied and many is a task of great magnitude. It involves entering a "gray" area where a manner of conduct becomes a matter of judgment and opinion; where intent may be as much a factor as accomplishment. The areas of black -- of criminal intent or deed -- are already quite clearly defined by law. The areas of white -- the exemplary -- are obvious to everyone. It is in the shadowy netherland between these that you are asked to define a set of conduct standards by which one might be judged either at the bar of public opinion or under the law. Such a task is most difficult, and seemingly thankless.

The New Jersey State Chamber of Commerce feels that, because of the broad variety of possible offenses against public interest by those in public life, it is impossible to detail them all by legislation. Instead, the Chamber feels that it is

better to set forth, in general terms, standards embodying the principle that one in public life must conduct himself with unquestioned devotion to public interest without taint of using his position for opportunity of any type of gain for himself, his family, his friends or his associates.

Furthermore, the State Chamber of Commerce feels that such standards should apply to persons in all walks of public life. They should apply equally to those serving at the county or local level as well as those at the State level. We feel, too, that they should apply equally to those in both elected and appointed offices.

To be most effective, such a standard, prepared as an oath or a code of ethics, should be brief, unequivocal and subject to constant public reference so that its principles are always before everyone in public office, as well as before the general public whose collective opinion provides a very effective means of enforcement.

Standards of conduct for public officials have recently been enacted by the State of New York covering integrity and ethical standards in government. (See Section 74, Chapter 696 of the New York Laws of 1954). These laws contain many worthwhile ingredients upon which a code of ethics for public servants in New Jersey might be formulated. Certainly, for example, no one in public office should accept "outside" employment which would impair his independence of judgment in the exercise of his official duties, nor should he disclose confidential information whether or not for personal gain. He

should never use his public office to secure unwarranted advantages or exemptions for himself nor should he pursue a course of conduct that includes any acts that are a violation of his public trust.

The New York law has other sound prescriptions.

However, the New York statutes per se may not necessarily be best suited to conditions of New Jersey public life. For example, there are prescriptions in them, which, by their use of the term "reasonable" have been rendered sufficiently vague as to be of little value as a basis of judgment. Thus, we feel, that, while the New York statutes offer good material for the formulation of a code of ethics for New Jersey, in its final form, such a code should reflect, by language and application, the needs of New Jersey alone.

We feel, too, that New Jersey must avoid the serious danger of over-regimenting those who enter public life. A highly detailed conduct law would, by its excessive prescriptions, tend to discourage from entering public life the very men who should seek it. For example, use of a term such as the oft-cited "direct or indirect financial interest", could, under certain circumstances conceivably be interpreted to mean that, to avoid a conflict of personal and public interests, no one in public office could own securities of any kind, retain any business interests or even maintain any outside sources of income. If in this particular area it is found necessary for a code to step beyond the bounds of stating moral principles, it must still be limited to those spheres where such a

financial involvement clearly indicates a duality of interest that is unquestionably contrary to the best interests of the public.

It should be pointed out, too, that in this "gray" area which the Commission is considering, the intent of one accused of an interest conflict may be of as much importance as the deed he is accused of. Because intent is itself a very shadowy, difficult thing to prove clearly, the comparatively narrow penalty prescriptions of a law may be too stringent in one case and too lenient in another.

To chart an effective course, the State Chamber urges that the Commission draft a code of ethics fixing general standards of conduct expected of all public officials and employees -- whether elected or appointed -- in all levels of government in New Jersey. This code to be presented to the State Legislature for adoption along with appropriate procedures for enforcing it administratively and, where appropriate, by statutory penalties.

And because we feel that the bar of public opinion can provide an additional, effective medium of enforcement, the State Chamber further urges that a terse summary of the moral principles underlying this code of ethics be prepared, possibly in the form of an oath.

While written nearly 2,500 years ago (by the lawyer Solon) as an oath of citizenship, and while not entirely applicable to the purposes of this Commission, we would like to quote portions of the Athenian Citizens' Oath of Loyalty as an

example of the kind of brief, unequivocal summary of principles that the State Chamber has in mind:

"We will never bring disgrace on this our city, by an act of dishonesty or cowardice.

"We will fight for the ideals and sacred things of the city, both alone and with many.

"We will revere and obey the city's laws and will do our best to incite a like reverence and respect in those who are prone to annul them or set them to naught.

"We will strive increasingly to quicken the public's sense of civic duty. Thus, in all these ways, we will transmit this city not only not less, but greater, better and more beautiful than it was transmitted to us."

The State Chamber urges that such a summary be rendered fully effective through widespread and continuing publicity -- even to the extent that it be reproduced for schoolroom use -- so that the moral precepts governing those in public life will always be common knowledge to every citizen of New Jersey.