

SECOND P U B L I C H E A R I N G

BEFORE

n.f.
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
September 16, 1957

Members of Commission present:

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

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

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SENATOR JAMES F. MURRAY, JR. (THE CHAIRMAN): The second public hearing of the Commission to Study Conflict of Interest will please come to order.

Counsel, will you please present our first witness?

MR. YAUCH: I am very much pleased to welcome here Senator Waddington who has had quite an interest in this subject that has been referred to this Commission. He has introduced over the past few years bills on the subject, the latest one being Senate No. 38, and therefore I am quite certain that Senator Waddington, looking at this not necessarily from the professional angle but also on the basis of his experience as a Senator from his county, can be of great help to this Commission. I am very glad to introduce Senator Waddington.

SENATOR MURRAY: We are pleased to welcome my distinguished colleague from Salem County, whose interest in the problem which this Commission was created to study goes back not only through his career in this Senate but also in the House of Assembly. And I might say that he is completely accepted and recognized in the Senate as probably the best authority in the Senate on this matter.

SENATOR JOHN A. WADDINGTON: Gentlemen, I do appreciate very much the opportunity to appear before you and I would like to preface all of my remarks with this statement: I do appreciate, as a citizen and also as a member of the Legislature the fact that you gentlemen have accepted the very difficult task on this Commission and I, and I am sure that many, many others in the Senate are grateful to you, certainly, for the time and thought which we know you have to give to this important and very difficult problem.

As has been stated, I have now a bill before the Legislature, which bill goes back about three years, and did at one time pass the House of Assembly, with a Committee Amendment, however, which excluded legislators. The bill has not been passed at any time in the Senate, yet I believe, from private discussions with many legislators, that the overwhelming majority are in agreement with the principles expressed in the bill. Of course a part of the bill is controversial in that some have considered it too demanding on members of the legal profession in the normal pursuit of their occupations and who happen to be members of the Legislature. Certainly there is an area here for men of good will to have legitimate differences of opinion but also an area in which I believe eventually agreement can be found.

As I have thought for several weeks of what I should present here today, I have felt that your Commission has the very worth while but very difficult task of determining three things, basically: First, is it necessary to have a conflict of interest or code of ethics bill for review by the Legislature and which might become law? Second, if it is found necessary, your Commission will then be faced with the professional problems of members of the Legislature, who are in one sense part-time employees but in another are officials with wide-spread influence and power. Third is the very difficult problem of where you draw the line on how much conflict of interest.

I should like to state some of my general views and from these I would be happy to discuss specific questions which might then be raised in your minds.

I have just read the statement given to you by your counsel. I think it is a very fine statement. I have similar

thoughts here, in which I say the morality of government, not only in Washington but at all levels, has become a subject of grave public concern, as practices which range from the questionable to the criminal have been disclosed over the past several years.

In 1949, 1950 and 1951 a Congressional Committee investigating certain practices in the Federal Government grouped them under six main headings, and four were of particular interest to me:

First, the acceptance by an official of gifts or entertainment designed to win his special consideration for the giver's interests.

The second category - Financial interest by an officeholder in a business which sells to firms subject to his official judgment or discretion.

Third, the use of a governmental position to further the future financial interests of an official or employee.

Fourth, the use of a political position to push governmental action favorable to politically powerful friends or campaign contributors.

Speculation and some facts would raise the question of whether New Jersey is immune to such instances.

I wish at this point to make two unequivocal statements:

First, I believe the overwhelming majority of state employees and state officials in the legislative, judicial, and executive branches are doing their very best in the public interest. Certainly their integrity and honesty is at least comparable and is probably better than those prevailing in business.

Second, neither my bill nor my intent is directed at the livelihood of any professional group. It is, rather, an outgrowth of my basic conviction that an unusual degree of trusteeship is involved in public employment and in public officials. A much higher standard of ethics is required of a trustees. The people's affairs - that is, the State's business matters - are far too intricate for the owners (the people) to have personal knowledge of. They must rely on their trustees. Above all things, a trustee cannot ethically, or legally in many instances, use his position of trust and personal gain, either directly or indirectly.

Because of this element of trust, the standard of morals should in all respects be higher than that prevailing in business or in human relationships generally. This, in my opinion, is not preaching or idealism. It is dire necessity, enlightened self-interest, the only conceivable way to keep government running and maintain public respect for it in an increasing complicated society.

Further, state employees and officials are entitled to know the specific code defining the rules of the game. The absence of such rules throws temptation in an employee's way in a manner which today is considered to be poor business management. To this extent the State must share the blame for some of the highly-publicized unfortunate acts by former state officials and employees.

I believe the passage of my bill or of similar legislation several years ago could well have prevented the unfortunate Hoffman case and others. In fact, it was this

case which caused me to introduce my bill. I am not a member of the legal profession, but I was flabbergasted to find that there was nothing in the law at the state level to prevent an employee in his official capacity from dealing with his own business in a private capacity. This is in violation of all business standards, accounting principles, and so forth.

On September 6 the Superior Court Judge who heard this case expressed my thoughts of three years ago in much better words than can I. I would like to quote just a few sentences from his decision:

"But beyond this, the issue is one of surpassing moral import and of consequence to the public welfare, for it is self-evident that the source and key of the apparent impotence of the State in protecting its funds was the dual agency of said Hoffman."

Another sentence: "And this conflict of interest explains what otherwise would be incredible."

There are those who have told me in reference to my bill that "you cannot legislate morals nor can you legislate the Ten Commandments." It appears that in a very real sense every law is an attempt to legislate morals. If all morals were self-enforcing, you wouldn't need any Legislature or courts. If you eliminate morality, you have only anarchy.

Despite the dictum that you cannot legislate morals, the Federal Government has developed piecemeal over the years a wide range of criminal statutes and administrative regulations to safeguard against official wrongdoing. In general, these laws are aimed against dishonesty, partiality, and other unethical practices by federal officials and private persons who may tempt them. Some of them include not only employees

but also members of Congress.

Naturally, we have some statutes covering instances here in New Jersey. For example, I have been told that it is a misdemeanor for an employee of a state, county or municipal institution, which is supported at least in part by funds from the State, to directly or indirectly have an interest in providing goods, supplies or property to such institution. I am told it is also a misdemeanor for a freeholder, a member of a municipal governing body, or of a board of education, to be directly or indirectly involved in construction or in furnishing goods, supplies, etc., paid for by the governing body of which he is a member.

Two thoughts raise themselves at this point: First, I am told there is nothing comparable in the criminal statutes at the state level, involving direct or indirect interest, such as these which have been applied to freeholders, members of municipal governments or boards of education. Secondly, there is the question of in what way does the sale of services differ, if it does, from the sale of goods, property, etc.?

In the case of Frank de Fio versus Albert S. Smith, the State Supreme Court decided on January 10, 1955, that members of the County Tax Board and the office of Chosen Freeholder are incompatible offices. Among the many thoughts stated by the Supreme Court in this case, I wish to quote one or two:

First - "Offices are incompatible or inconsistent when they cannot be executed by the same person, or when they cannot be executed with care and ability, or where one is subordinated to or interferes with another..."

Another sentence - "... No man should be in a dual position where there exists the possibility of conflicting interests, despite the admirable manner in which he is presently performing his duties. The gist of the text... is the possibility of a conflict in the obligations of the positions in relation to the public interest."

Please let me add my emphasis to the thought that we need a code of ethics and certain rules as preventive action, as the court has said, "where there exists the possibility of conflicting interests."

I fully recognize the difficulties your Commission may have in developing specific proposals; for example, we all know that only a shadowy line may exist in some cases between outright bribery and mere good fellowship. It appears impossible to legislate effectively as to precisely how much hospitality and how many small gifts an official may ethically accept from persons who may have a private interest in his decisions. In this area, it seems to me, people must continue to rely upon the personal honor of their officials. However, administrative regulations, such as those developed by former State Treasurer Archie Alexander for his department, or a formal code of ethics can define certain principles in advance, even if these do no more, in many cases, than remind thoughtful employees and officials of the full implications of their public trust.

It is a fact of law, I am told, that a Judge cannot be an advocate of one side and still sit in judgment on a case.

A great deal of legislation involves an issue of a special interest versus the people of the State as a whole. To plead the cause of special interests is the duty of a lobbyist, or counsel for trade associations, unions, etc. If a legislator is committed as an advocate of a special group or interest, he certainly cannot retain, in my judgment, at the same time his status as a lawmaker or an advocate of the people of the State as a whole, or even of his county as a whole. This, too, in my opinion, is not idealistic moral theory - it is just plain common sense which every thinking citizen recognizes and endorses.

Some few constituents may demand more than merely information or arranging for interviews with departments of government through their elected officials. They may demand that he press their case or act, in effect, as their unofficial agent or advocate. Adoption of a code of ethics to cover such matters would not only clarify this situation but would make it easier for the officer or employee to refuse offers by pointing to it and using it as a defence in resisting unwarranted demands.

Gentlemen, my bill is an attempt to write a code of ethics. I do not conceive of it being the Alpha and Omega. It may be that specific legislation is necessary in addition to a bill similar to mine. However, you will find that my bill includes business contracts, investments, unwarranted use of position, acceptance of gifts, and influence on decisions. We have attempted to be specific with family connections by defining them as spouse or blood relative closer than a first cousin.

Your problem, as I see it, is to draw lines as to how much conflict of interest. The holder of a few shares of common stock in a railroad could hardly be barred or would wish to divorce himself from voting on a matter concerning that or other railroads. This kind of thinking in many fields could certainly lead to absurdities.

Certainly a legislator, for example in the insurance business, is entitled to know in advance that it might be considered unethical for him to accept insurance policies paid for by the State and on state property. Recently, we had the illustration of the Mayor of Wilmington, Delaware, who has been roundly criticized in the press for accepting large insurance policies on city property through his private insurance agency. I would not defend the Mayor's actions, but I do say in all fairness to him that a code of ethics should have been set out in advance. I would feel a more definitive code of ethics than mine, if you were to develop one, should consider barring legislators from appearing as attorneys representing clients before departments of the State or in controversies against the State. I can affirm to you that a number of lawyer legislators from both political parties have told me they have personally adopted this as a part of their own personal code of ethics. However, there certainly could be no objection from me to such gentlemen appearing before the courts of the State in a professional capacity or appearing before quasi-judicial bodies such as the Workmen's Compensation Bureau or in a hearing of the Public Utilities Commission. These are, in effect, courts, as I see them.

The determining factor, it seems to me, is whether there could be the possibility of conflicting interests, and as the Supreme Court has said, "despite the admirable manner in which he is presently performing his duties."

On this pesky problem of the legislator, as another suggestion, you might consider the advisability of recommending a standing committee on conflicts of interest or a code of ethics, probably within the Legislature itself, both to review problems and to form a group to which legislators might go for advice in advance of action.

To briefly summarize, gentlemen: First, I believe, in all fairness to state employees and officials, it is necessary to spell out in advance what is considered good ethical conduct. I believe the people of the State of New Jersey have the right not only to expect a high level of integrity but also the right to know just what it is. The precedents, as I have tried to point out, have already been established within the State.

Secondly, I do not see how you can properly develop either a code of ethics or a definition of conflict of interest without including part-time employees of the State, such as members of the Legislature.

I'm afraid I haven't told you much of anything which is new or which you didn't already know. You and others whom you will hear are certainly much better qualified than I to speak and decide on this difficult matter.

Thank you very much hearing me with your kind patience and, if you wish, I shall be happy to discuss further any statements I have made.

SENATOR MURRAY: Senator, before we accept any interrogations, may I make the motion that your Senate Bill 38 in its entirety be accepted and annexed to our record as an exhibit.

MR. YAUCH: I have a copy here which I will hand to the stenographer.

MR. KEATING: I second that motion, Senator.

SENATOR MURRAY: Are there any questions, gentlemen of the Commission?

MR. YAUCH: May I ask the Senator a few questions? Perhaps that will give the members of the Commission an opportunity to orient their thoughts as to further questions.

SENATOR MURRAY: Proceed, Counsel.

MR. YAUCH: Senator, I take it from what you told us here today - and may I say, on behalf of my position here as counsel to this Commission, that it is quite apparent, based on the little time that I have had to see this problem, particularly the way it's been dealt with in other states, you have given a great deal of thought to it. Now, on the basis of what you have said, I take it that the purpose of your bill, Senate 38, is to also include in its effect members of the State Senate and Assembly?

SENATOR WADDINGTON: I do not see how, as I have said before, you can define conflicts of interest for state officials and employees without including part-time people, including members of the Legislature.

MR. YAUCH: In that connection, one of the last statements you made had reference to your idea of being

realistic - that the positions which all of our state legislators and many of our state officials hold, in effect, are part-time positions and, in view of that, in those cases where the legislator or official is a professional man, whether it be doctor, lawyer, or whatever it may be, that he should not be prohibited from carrying on his profession. And in the case of a lawyer, you particularly referred to carrying on his profession and practicing before the courts. So you recognize, because of the fact that many of these officials are part-time representatives of the State Government, that, in being realistic about it, we should not go too far and overreach and prohibit what would appear to be a normal practice of their profession.

SENATOR WADDINGTON: I feel that it could be detrimental to good government if any conflict of interest legislation were to go so far as to bar competent people who accept state positions from also being able to earn a living. As I see it, your task is to provide a framework within which competent men can earn a living without conflict of interest and still carry on legitimate pursuits of their occupations. Certainly the furthest thought from my mind would be any innuendo which might impute that I feel lawyers should not practice law.

SENATOR MURRAY: I intended, Senator, to make the statement that your conduct in the Senate has always been vigorously in support of lawyers practicing law.

MR. MARCIANTE: Senator, I would like to ask you a question, if you don't mind: I notice that your bill carries no provision for any penalty or any method of handling the

situation. Now, it has been mentioned here several times about the Ten Commandments - they haven't stopped transgressions by any means. Have you any idea as to what should be done to control this situation aside from legislation that would be difficult to write?

SENATOR WADDINGTON: Well, I tried to make clear in my testimony that I feel that legislation should be written, and I think it's very conceivable that in addition to a general statement of a code of ethics that specific bills should also be adopted. The use of specific bills and of a general statement on conflict of interest would follow the pattern which has already been established in the federal government in Washington and, to some degree, has already been established for municipal, board of freeholder, and board of education officials within the state.

SENATOR MURRAY: Senator, what penalties would appear reasonable to you for this Commission to consider in instances where office-holders or employees, as defined in your bill, would be found in violation and, secondly, may I ask, as Part B, perhaps, to that question: Who, in your opinion, should determine whether a violation in fact exists?

SENATOR WADDINGTON: This problem is not, as you are well aware, unique in government. It also abounds in business and industry. It would seem to me that after certain acts have been barred by law, it is an administrative responsibility for employees, to be handled by the departments. This would follow the practice which, it has been my experience, already exists in industry, for example. The Legislature,

however, is a different matter, and that's why I suggested for your consideration the possibility of a standing committee in the Legislature. I also understand that New York State has had some experience since 1954 with a permanent Commission of the State. I have no knowledge other than the fact that New York State has such a commission. It would seem to me their experience would be relevant to this question.

MR. KEATING: Senator, could we get back to the illustration you gave of the abuse of a public trust in the case of the Mayor of Wilmington, who is alleged to have placed insurance business with the city while he was the Mayor. I don't know the facts; I am going to assume that you are correct.

SENATOR WADDINGTON: He admitted that.

MR. KEATING: Now, you said that he at least didn't even have a code of ethics to go by. There was no code of ethics, I take it, for elected officials in the City of Wilmington.

SENATOR WADDINGTON: Right.

MR. KEATING: Then I began to think: Well, if he had a code of ethics, would he have acted any differently? There was no penalty for violating it. At this point, if you would care to, I would like to have you give us some of the thinking by which you arrived at the conclusion that you prefer to introduce a bill which was merely, as you have named it, a code of ethics, rather than a bill which had teeth in it and provided penalties for abuses of conflict of interest.

SENATOR WADDINGTON: Well, my optimum of thinking is that two things are necessary: a general code of ethics and, secondly, specific bills directed at cases where he would get involved in criminal intent.

MR. KEATING: Well then, I take it you feel that you are merely laying the groundwork by first introducing this so-called code of ethics. Would you, if that were passed by the Legislature, go farther and introduce bills with teeth in them?

SENATOR WADDINGTON: I did not feel qualified to draw legislation which would specifically attack the areas that more competent people could well decide should be attacked. I felt that a code of ethics bill, if passed, would immediately raise questions, which it has. And that, I think, is the most its introduction could accomplish.

SENATOR MURRAY: Senator, may I ask you whether it is your feeling that such a code of ethics as your Senate Bill No. 38 would provide, or something similar, might not be more effective if it were embodied in the Rules of the Senate and House of Assembly which, by virtue of the inherent power of those bodies, very strictly and with some effect govern the actions of their members? In other words, if the Rules of the Senate, for example, were to embody some of the provisions of your Bill 38, would that not place the responsibility on the membership of the Senate, or on the membership of the House, as the case may be, if any one of its members violated the code of ethics?

SENATOR WADDINGTON: Senator, down in our county we have learned there are several ways to skin muskrats. I would have no objection to doing it either way. However, I would feel that a general code of ethics could be developed which could apply to all state officials and state employees, including members of the Legislature. To make it more definitive, it might be useful, in addition to that, for the Senate and the House to add to it, to further define it.

SENATOR MURRAY: I am thinking in terms of the Bar Association and its policing of attorneys by virtue of the code of ethics, and my question was merely one of speculation as to whether in your opinion a similar procedure might not be effective within the Rules of the House and the Senate.

SENATOR WADDINGTON: I wouldn't disagree with what I believe to be the intent behind your question, but I find it difficult to conceive that a proper code of ethics shouldn't apply to all.

SENATOR MURRAY: I am not, Senator, by implication or by direct desire attempting to exclude anyone, but I do see some difficulties in applying certain phases of this to the Legislature, and my question merely was to try to ease those difficulties.

SENATOR WADDINGTON: I agree with that.

MR. MARCIANTE: I would like to ask one more question, Senator - well, maybe two more. Would you be in favor of the establishment of a permanent committee of the Legislature, or a committee composed of private individuals and members of the Legislature, to be not a police committee but at least an advisory committee and a committee that could take action if some flagrant violation were to take

place? For instance, let me just illustrate a little bit: Let's suppose that you are running for office and some nice fellow came along and slipped a few thousand dollars to you, to campaign with. Later on, he came to you and he said, "John, I'd like you to take me over to the Highway Department and introduce me to John Jones; I have a problem there and maybe it will help." You are in doubt as to what to do. You would have somewhere to go to be advised as to whether you are in conflict or not. Would you be in favor of that kind of a setup, a committee, a commission, or whatever you call it?

SENATOR WADDINGTON: I certainly feel that state employees and officials and members of the Legislature are entitled to have a competent group to whom they can go for advice, if there is a question in their mind, before the fact rather than be subject to extensive criticism for something which a man could, in all innocence, have conceived to be ethical after the fact.

MR. MARCIANTE: Then you would be in favor of that.

ASSEMBLYMAN FRANKLIN (THE VICE CHAIRMAN): Senator, I have one or two questions on a point that interests me. I think one of the difficulties this Commission faces is the question of where to draw the line; it is a matter of degree, in effect, as you have mentioned in your testimony, in determining whether conflict of interest exists. And I notice here, in paragraph 6 of your bill, S-38, for example, a rather broad rule. It states: "No state officer or employee shall make or participate in the making of any decision, order, rule or regulation of any state agency

involving or affecting any business entity in which he.... has any direct or indirect financial interest."

Now, I am wondering about the effect of that on a businessman in the Legislature, for example, whose unemployment compensation activities may be under review by the proper state agency. Should he be barred from appearing before the state agency involved?

I don't know whether you have given this any thought or not.

SENATOR WADDINGTON: Yes, I have. It's one of the real difficulties that you face. I think I would accept, first of all, the implication that Item 6 in my bill is perhaps too broad, too general. On the other hand, in the illustration you used, involving his own business and testifying before a department or one of the quasi-judicial commissions, I have attempted to differentiate there in my testimony - that I felt that a legislator-lawyer should certainly be permitted to represent a client before these quasi-judicial commissions of the State.

SENATOR MURRAY: Senator, on the same point that the Assemblyman has mentioned, would not that same paragraph 6 in your Senate Bill 38 make it almost impossible for some of the state agencies to function at all. For example, some of our licensing agencies or some of the regulatory authorities such as the Medical Examiners, for example - what they would be doing really, and what they are created to do, is to guide and advise and sometimes draw regulatory measures for their own profession. How could that possibly continue under your paragraph 6?

ASSEMBLYMAN FRANKLIN: The reason I raised this question, Senator, is that it seems to me, in drawing this line and determining the degree, you might want to consider the findings to some extent in connection with the general objective which is set forth in Paragraph 6.

SENATOR WADDINGTON: Well, the objective of Paragraph 6 is to rule out a state officer or employee establishing a contracting business, for example, with which the Highway Department might deal, of which department he might conceivably be a part and have some responsibility for allocation of contracts - that he would be barred from making any decision affecting this particular business enterprise. That is the intent of Item 6.

ASSEMBLYMAN FRANKLIN: Another question on paragraph 6, to turn to the lawyers for a moment: What about a situation where you have an attorney who files on behalf of his client a New Jersey Transfer Inheritance Tax return? In a situation such as that, where I suppose you would say he would be participating or helping to make a decision with the Tax Bureau as to the tax liability, would you think that that sort of transaction should be barred to an attorney who is also a member of the Legislature?

What I am getting into, Senator, is a whole series of categories of almost every-day transactions with state agencies where you don't have a quasi-judicial commission, yet the situations are such that they are normally barred from doing business or engaging in the practice of law.

MR. YAUCH: Senator, before you answer - Gentlemen of the Commission, may I call your attention to the fact

that it is quite difficult to hear back here. I don't think there is a loud speaker and I think the apparatus you are talking into is merely for the purpose of recording. So please keep that in mind.

SENATOR WADDINGTON: Assemblyman, I would feel far less qualified than you, for example, to know exactly where to draw the line among the state departments and commissions. It seems to me, as I have thought about this, that my statement in the testimony is about as far as I could go in making a determination. I am sure that there are many, many such decisions that members of the bar who testify before this Commission or those of you who know much more about it than I, can determine, but it seems to me that a determination should be made and that in general I can see no justification for such individuals handling suits against the State or in conflict against the departments of the State, but on the other hand I know that in order to earn a living, these gentlemen must practice law, and certainly the quasi-judicial commissions of the State form an area in which it would be easy to make the ascertainment.

MR. MARKS: Senator, I have a question, and this question presupposes another: Your paragraph 9 states, "No state officer or employee shall make any personal investment in any enterprise which he has reason to believe may be directly involved in or affected by any decision, order, rule or regulation to be made or issued by the state agency in which such officer or employee serves or is employed." I have an illustration:

You may have covered this before - but let's suppose that a member of the Public Utility Commission

should own ten, twenty or thirty shares of American Telephone stock. American Telephone has in excess of a hundred million shares, yet, by the wording of paragraph 9, a member of the PUC would be barred from owning an investment in any utility or railroad in the State.

SENATOR WADDINGTON: Well, I used the illustration of a railroad, and a public official or legislator who owns a few shares in a railroad. Again, I go back to the statement I made in my testimony that your problem is one of defining degree.

MR. MARKS: Well, I said that one question presupposes another. I am very much interested in hearing your recommendation, and you have said, I think quite accurately, that there should be one code of ethics for all. Who, then, in your opinion, and I would like to hear you be specific, if you will, shall judge, and once having judged, who shall enforce? That's what I would like to know, in your view.

SENATOR WADDINGTON: Well, I have attempted to give you my views that, for full-time employees, enforcement, it seems to me, is an administrative responsibility within the organization. There have been instances recorded in the public press in which the administration throughout the years has taken some action, particularly where fraud and criminal intent are involved.

In the case of the Legislature, I have suggested for your consideration that perhaps a standing committee of the Legislature would have the responsibility of making judgments when such instances were brought to their

attention.

SENATOR MURRAY: What about the administrative boards, Senator, and the other part-time employees who are not members of the Legislature? Would that fall under the same administrative head that you recommended for the full-time employees of a given department?

SENATOR WADDINGTON: I'm afraid I don't feel qualified to give a considered opinion. It would seem to me that the experience of New York State, with the over-all agency, would be useful there. Also, I can see nothing that would bar commissions appointed by the administration from coming under the scrutiny of the administration.

MR. YAUCH: Senator, I hope that we are not tiring you too much, but this is an excellent opportunity, I feel, and it's quite apparent that the members of the Commission do also, to get some information from you, who have given this subject so much thought.

In line with the question that Assemblyman Franklin asked you as to where to possibly draw the line with reference to allowable practice by an attorney or whatever the legislator's profession may be, may I inquire of you as to what your thought is, and I believe you referred to quasi-judicial committees or boards - that in that case and also before courts as we all understand them, your thought was that a legislator who is a lawyer should be permitted to practice before those bodies. Now, may I ask you, in that connection, what would be your thought with reference to condemnation proceedings?

SENATOR WADDINGTON: Well, this was one of the areas that I had in mind when I said that I felt part-time state employees should not be permitted to represent clients in controversies against the State.

MR. MARCIANTE: May I ask one more question? It was suggested here last week that elected officials, when they are elected, be compelled to give an accounting of all their wealth or lack of wealth, or possessions, etc. Would you be in favor of that?

SENATOR WADDINGTON: My offhand opinion, Lou, is that that goes much further than I would feel necessary. I recognize that each of us, when we accept public office, lives in a fish bowl. But it seems to me, to demand that all officials publicly account for their holdings and their wealth is a bit more extreme than I would go at this moment.

MR. YAUCH: Senator, in connection with some of the questions of members of the Commission as to what your thinking would be as to the method of enforcement of a code of ethics, it is quite apparent to me from what you have said here this morning that you are familiar with the report of the Commission on Conflict of Interest that studied this question in New York State and filed a report in 1954. Am I correct in that assumption that you have referred to that?

SENATOR WADDINGTON: When this bill of mine was first developed something over three years ago, I did read the report of the New York State Commission, and my bill is predicated on their recommendations in part.

MR. YAUCH: May I, for the record, point out that in the report that counsel provided the members of the Commission with - Preliminary Report - we set forth the procedure that was adopted in New York State, which in a few words is with reference to those areas where it would seem quite apparent to the man of average good conscience there would be a violation of the duty of a public official toward the public. In those clear-cut areas, the Legislature in New York dealt with them by specific statute which stated "you shall not do this," and so on, and provided penalties. Then, as to the areas not defined so clearly, the Report of the Commission in New York, which was adopted by the New York Legislature, recommended that a code of ethics be adopted, and that code of ethics generally went along the line of what Senator Waddington has stated in his bill, Senate 38.

Then, beyond that, the Commission in New York recommended that a permanent commission be set up - two permanent commissions - one in the Executive Departments which would deal with the Governor's Office all the way through the various Departments of State, and the members of the Commission, under that statute, were appointed by the Attorney General in New York.

Then there was another commission set up by concurrent resolution of the Senate and Assembly in New York to deal with the matter of the code of ethics as it applied to state legislators. The function of those permanent commissions, both with reference to the Executive and the Legislative, was to consider and make determinations on any complaints

of violations of the ethics code and report recommendations to the Attorney General. In other words, if there were some clear-cut cases that involved a breach of existing statutory law, then the matter would be referred to the Attorney General.

Then the second area, within which those permanent commissions would function, would be to render advisory opinions which would deal with what Senator Waddington referred to before, that where you may have, and no doubt do have, a number of conscientious public officials who sometimes have a doubt, this permanent commission would be available for the purpose of advising on that.

Then also, another function of the permanent commissions in New York was to assist state agencies in adopting codes, which you referred to before, Senator - that state departments probably should deal with this as it affects their state departments. While I don't mean to imply that New York State is a model which New Jersey should follow, I merely refer to it as some information which may be considered by the Commission in dealing with the situation as we find it in New Jersey.

May I say, Senator, for the record, that the quote that Senator Waddington cited was from the decision of Superior Court Judge Hughes in the case of New Jersey v. South Amboy Trust Company, an opinion which was recently handed down.

Are there any other questions by members of the Commission?

Apparently not, Senator. I think you have certainly covered the ground, and I am sure the members of the

Commission are very grateful.

SENATOR MURRAY: I would like to add my words of thanks to Senator Waddington for taking time out to get us the benefit of his testimony and experience, and to express the hope that he will be able, at the next session of the Legislature, perhaps, to vote on some of the recommendations of this Committee which has benefited from his counsel.

SENATOR WADDINGTON: I will be glad to co-sponsor such legislation, Senator.

SENATOR MURRAY: Counsel, I believe the next witness is our Attorney General. I just wonder if you want to take a brief recess or continue.

MR. YAUCH: What is the pleasure of the members of the Commission?

MR. KEATING: I think we should take three minutes just to stand up.

(Recess)

SENATOR MURRAY: Gentlemen, we will resume with the testimony of the Attorney General, the Honorable Grover Richman.

We welcome you to our hearings, Mr. Attorney General. We are very grateful that you have found it possible to take time out of a very busy schedule in order to give us the benefit of your advice and counsel on the matter of conflict of interest. For my own part, I think that probably the substance of our inquiry with respect to your testimony will concern your professional opinion as to problems of enforceability, if this Commission is to recommend certain statutory changes or additions on the topic of conflict of

conflict of interest.

Do you have any statement which you would like to make before--

GROVER C. RICHMAN: No, I have no general statement, Mr. Chairman, because I had understood from you that that would be the general tenor or the purpose of my appearing here today.

SENATOR MURRAY: That is correct.

MR. RICHMAN: So I have no general statement to make. I am perfectly willing to answer any questions that you or members of the Commission may have.

SENATOR MURRAY: I know, Mr. Attorney General, that you were here during the testimony of Senator Waddington concerning Senate Bill No. 38 which he has introduced.

I would like to lead off by asking your judgment concerning paragraphs 5, 6, 8 and 9, which, as you will observe, are very broad in scope, and my general question is whether or not you feel that such an approach as those paragraphs embody could possibly be enforced?

MR. RICHMAN: Well, as I understand this bill, it is limited to state officers and employees and my recollection is that it was amended to specifically exclude members of the Legislature. I don't think that makes too much difference because I would not read the phrase "state officer and employee," as it's here defined, as including members of the Legislature in any event. So all this proposed code of ethics - and that's what it amounts to - deals with is Executive employees as I see it, or legislative employees,

and judicial employees, of course.

Now, let me say first that of course we all recognize that this proposed legislation is merely a guide, that it imposes no sanctions and no penalties except, conceivably, if this legislation were passed, it could be the basis for administrative action by any of the three branches of government so far as their employees are concerned, in conjunction with the present civil service rules, and so forth.

Now, as to paragraph 5, which relates to the engaging as agent for or on behalf of the State with any business entity in which he, his spouse, or his blood relative closer than first cousin has any direct or indirect financial interest.

Let me put it this way: If that were in a criminal statute, I have grave doubts as to the words "business entity" - I have serious doubts as to whether or not that is a specific enough phrase upon which to base a prosecution. I think it could be said that the charge which would have to be made under this section could not be certainly enough stated to warrant a sustainable conviction. Now, I'm not sure about that but that's my feeling about that particular section.

So far as the degree of relationship, of course, that's always provable. I would question again the use of the word "indirect" if it were used in a criminal statute, because that, too, is probably not susceptible to any firm definition. I don't say there isn't other language that could accomplish what this purports to accomplish, but I am dealing strictly

now with these particular sections.

As to section 6, I have some trouble with the word "participate," although to me that means actually to be a part of the determining body who makes the decision, but it's not the sort of language that lends itself to easy criminal prosecution, in any event.

As to 8, I question the use of the words "a substantial portion of the stock." I mean, that seems to me so clearly vague as to be difficult of enforcement.

Now, when you come to the business of selling property or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed, there, of course, you must recognize that in our present framework of society that covers an almost inconceivable number of persons, firms and corporations, because with our licensing provisions today, if you are going to go for this, you would have to be cognizant of the very broad and sweeping effect that this would have. Very little business is not licensed any more; almost all of it is. That's not an enforcement problem. That's a policy problem and I perhaps should have stayed away from it entirely.

MR. YAUCH: Mr. Attorney General, I noticed you were here when Senator Waddington was testifying and you were present when I was referring to the approach that has been taken over in New York, referring specifically to a code of ethics with a permanent commission. What is your view as to the - assuming this Commission would give consideration to

dealing with the problem before it along the line of a code of ethics - assuming that without, of course, indicating that there is any such conclusion at this point. The permanent Commission that they set up in New York - what would be the legal situation with reference to the setting up of such a commission over here? What I have in mind is, and I direct your attention to it, I believe there is a constitutional provision that makes each house the judge of its own rules, and so on.

MR. RICHMAN: And the qualifications of its own members.

MR. YAUCH: Yes. Would such a permanent commission on the code of ethics probably have to be constituted by members of the Assembly and Senate?

MR. RICHMAN: Talking now in the area of the legislators--

MR. YAUCH: Yes.

MR. RICHMAN: -- and not in the area of the state employees, themselves?

MR. YAUCH: That's right.

MR. RICHMAN: I would certainly think, under our constitutional provisions, that that commission would have to be an arm of the Legislature itself and identifiable with the Legislature itself.

MR. YAUCH: And that would be by virtue of the provisions of the Constitution that we just referred to?

MR. RICHMAN: That's right.

MR. YAUCH: Not as a matter of what the judgment of this Commission might be, and so on, - that area has already been limited by the Constitution itself.

MR. RICHMAN: I would think so.

MR. YAUCH: Now, as to the other areas that a code of ethics might deal with - executive officers, state department employees, legislative employees, and so - what is your impression, General, as to the effect or enforceability of, let's say, the rulings and determinations of such a permanent commission?

MR. RICHMAN: Well, my reaction so far as the executive branch is concerned is that it should be a matter for the department head, and he has ample statutory authority now to make regulations, to make any reasonable regulation that he believes and can substantiate would contribute to the efficiency of the operation of his department. Now, I think in that framework the department heads presently are able to take care of the situation and many of them have, where situations have arisen. I know it has happened in the Highway Department, in the Treasury, in Labor, in I and A, and I think a few others. It seems to me that the responsibility rests on the department head and the eventual supervision, of course, by the Governor, and that there is ample statutory authority now in that area to do this where it's necessary.

MR. YAUCH: In other words, if the Commission should recommend a code of ethics and the Legislature should adopt a code of ethics which would apply to state officers and employees, your thought would be as to the enforcing of it - that that could be accomplished within the various departments?

MR. RICHMAN: Yes. I think R.S. 27:1-8 says in part that the department heads have the power to adopt rules

and regulations and prescribe duties for the efficient conduct of the business, work and general administration of the department, its officers and employees. Now, that certainly, in my opinion, is sufficiently broad to encompass this particular area.

MR. MARKS: Mr. Richman, to put it another way, do I understand you to think that additional statutes on this matter might be considered superfluous?

MR. RICHMAN: Oh, no, I didn't say that at all. We were talking about the method of doing it, not the substance of the matter. What I am saying is, so far as the department heads are concerned, I believe they have presently sufficient statutory authority to make all of the regulations they think are desirable in this area.

MR. MARKS: Well, let me rephrase my question then: Do you think that a new statute is necessarily the answer to this problem? Are there other ways of handling it, do you think - other than statutory ones?

MR. RICHMAN: Oh, I think, so far as the executive departments are concerned, it can be handled under the present statutes, and by the making of appropriate rules and regulations, and I believe it has been quite adequately handled by the present department heads in all those instances where conflicts appeared. As a matter of fact, I am referring now to an opinion we gave to the Highway Department as to outside activities of employees and how far they should be permitted to engage in outside activities. We have given similar opinions to other departments.

Now, when you get into the area of legislative employees and the legislators themselves, that is an entirely different area from a procedural point of view, and there, I think, it is a matter for this Commission to determine how they feel about it. I don't think I am here today to talk about policy, although I will if you want me to.

MR. MARKS: Well, I just wanted to have an opinion from you, because your opinion is valued by this Commission, I am sure.

MR. RICHMAN: Well, I think we have all got to recognize the basic proposition that you cannot legislate morals. However, I don't think that answers the problem entirely, and I look at the Federal Government where you do have definite statutory prohibitions with respect to Congressmen and other members of the Federal Government. I think there is work to be done in this field. I would not for a moment say that legislation is not necessary or desirable.

SENATOR MURRAY: Mr. Attorney General, I believe you heard Senator Waddington and our counsel discuss the advisability of establishing some sort of permanent commission or council to which the average state employee might have recourse in advance of a situation. I was wondering if you would tell us where, in our present structure of state government, in your opinion such council might most effectively be placed, and I was particularly wondering whether under your own jurisdiction you might think a proper locus for this council?

MR. RICHMAN: Well now, assuming such a council were to

to be established, and I am not for a moment saying that I think that's the answer to the problem, it would be as you described it and as I listened here earlier in the nature of an advisory council. Of course, I am now required to give advice to the members of the Legislature and the Legislature as a whole. I am wondering before I answer this question whether or not you shouldn't consider the always dangerous implications of advisory commissions. If you are going to eventually pass criminal statutes in some of these areas, then I think you should hesitate before you set up an advisory council, because I can readily see difficulties in prosecutions where there may be a clear and obvious violation of a criminal statute, and I can easily see the defense being raised that rightly or wrongly this matter was cleared through an advisory council. So in that area I think you have to be very careful. In other words, if you are going to go for an advisory council, then you have to be very careful what criminal statutes you propose and vice versa, etc. It is difficult for me to say where such a council should be. I think, so far as the executive branch of the government is concerned, it should be established directly under the supervision of the Governor. So far as the legislative branch is concerned, I think it has to be, as we said before, so far as the members are concerned, confined to the members of the Legislature. If you are talking about legislative employees, then again I don't think we ought to mix up these branches of the government. I think it ought to be within

the branch where the people are employed.

SENATOR MURRAY: I think, General, that what may be in the minds of many who discussed such an advisory council or such a commission is a rough or general parallel with the Committee on Ethics of the average bar association, to whom the practicing attorney in advance may resort for advice, but I agree with you that the circumstances are usually different in that there is not involved the anticipated violation of a criminal statute; it's somewhere in no man's land and an attorney can be guided.

MR. RICHMAN: That's right.

SENATOR MURRAY: Are there any other questions from the Commission?

MR. YAUCH: Only that I wanted to ask the Attorney General: I understand then that in several of the state departments there are already in existence what in effect might be considered a code of ethics by way of possibly rules and regulations?

MR. RICHMAN: I think that's so. You take, for example, my own department, in the Division of Law, although we have no code of ethics there, we actually have a statute which prohibits Deputy Attorneys General from becoming involved in any matter in which the State may have an interest. So that is covered statutewise. The State Police, of course, in their own regulations, govern all types of conduct, and in the A B C we have the same situation. In the other areas of state government, the Treasury Department, as you know, passed a statute, or had a statute passed a couple of years ago

making it a criminal offense to accept gratuities or anything along that line. Commissioner Palmer has thoroughly surveyed his department and has made firm rules as to outside employment and other areas where conflicts might arise. Commissioner Holderman has investigated his own department and has done substantially the same thing. We have made some drastic changes in I and A with respect to doctors receiving money from private clients who are also employed by state institutions. That is also true in the Labor Department of doctors testifying for the State and for insurance companies, and that situation has been straightened out.

MR. YAUCH: General, I noted in the public press the other day a ruling that your office made by way of an opinion to the Secretary of Agriculture of the State, wherein in your opinion you stated, "As a rule, governing private employment by state employees there must be at all times meticulous avoidance of any situation involving the possibility that divided loyalties may influence the fair and impartial conduct of a state employee in the public interest." And then you advised accordingly. Now, that didn't have to do with any specific statute?

MR. RICHMAN: No, it did not. There, you see, you have a typical example of what happens from time to time. It looks on its face like a perfectly innocuous situation. Here you have in the Department of Agriculture a program for typhoid testing and bird selection; it's a breeding program, to improve the breed, and so forth and so on. Certain breeders are licensed and there aren't too many

people who can do this sort of thing. Now, what they wanted to do was to take the state employees out of the Department of Agriculture who knew how to do this and employ them after hours in doing this type of work for private compensation, and the motive, admittedly, was good except that these same private employees who would be employed by the breeders also control, to a certain degree, the licensing of the very breeders they are working for. So that you have a definite potential where the individual state employee is without a question serving, at least in part, two masters. And to that we said, no.

MR. MARKS: General, to complete the record, I think the original question asked you by the Chairman was if you would be kind enough to review certain paragraphs of the Waddington act. I don't think you covered Paragraph 9.

MR. RICHMAN: Paragraph 9? I thought the Chairman had limited himself to 5, 6 and 8. Perhaps I misunderstood him.

MR. MARKS: I could be wrong too.

SENATOR MURRAY: We will amend it, in the light of Mr. Mark's question, to include also Paragraph 9 if that be necessary.

MR. RICHMAN: Well, speaking again from an enforcement point of view, although I recognize the fact that the phrase "he has reason to believe" has been generally recognized in the criminal statutes, I am again doubtful, not here so much from the enforcement standpoint - I think this regulation is enforceable - yes. Whether it is

advisable or not, I don't say; I think it's enforceable.

SENATOR MURRAY: Are there any further questions?

ASSEMBLYMAN FRANKLIN: I have one question, Mr. Chairman; Mr. Attorney General, you have mentioned specific instances of statutory and regulatory provisions for dealing with various aspects of this conflict of interest problem. The Commission has been looking at what New York has done in this field and there, in the administrative field, they apparently passed a statutory provisions with penalties for definite situations involving conflicts of interest, and then they set up a general code of ethics, and it is my understanding that these statutory provisions and code of ethics were generally applicable to employees in the administrative field. I believe they also set up an administrative commission. Now, do you think there is any room or that it would be to advantage or would be an improvement to have us adopt such legislation and code of ethics that would give us more or less a complete framework in the conflict of interest field applicable to the administrative branch--

MR. RICHMAN: To the executive branch?

MR. FRANKLIN: To the executive branch, yes.

MR. RICHMAN: I think the establishment of a general code of ethics could never be characterized as harmful, certainly, and could be of some definite assistance in guiding department heads, but I want to again repeat that the department heads have the power now and have been doing it generally. But I certainly can't see how the establishment of a general code of ethics could be criticized in any

way.

SENATOR MURRAY: Any further questioning by the Commission?

If not, may I renew my thanks to you, General, for having appeared before us this morning and assure you, from having listened to your testimony, that what you have said will be of the highest importance in guiding us across some of the no man's land which I know we are encountering and will encounter in our attempt to prepare this report to the Legislature. We are very grateful to you for having come.

MR. RICHMAN: Thank you, Senator.

SENATOR MURRAY: Gentlemen of the Commission, it is now 12:30, which is our usual recess time. Do you wish to continue, in view of the fact that we started late?

MR. MARCIANTE: Why not continue until one o'clock. Maybe we can finish?

SENATOR MURRAY: No, we can't finish.

(Discussion off the record)

SENATOR MURRAY: Our next witness then, gentlemen and counsel, will be one of the most distinguished Senators that this Senate hall has known and one of the finest attorneys and counsel in the State of New Jersey, who has accepted our invitation to testify before us specifically with reference to those areas of potential conflicts of interest that may arise in the fields of the legislator and the practicing attorney and all of the kindred areas. In welcoming Senator O'Mara, we wish to thank him for taking time out of a busy schedule to appear before us.

Counsel, do you wish to open the questioning of Senator O'Mara?

MR. YAUCH: Well, the only thing by way of opening is to make a statement that, as you have already indicated, Mr. Chairman, personally I don't know of anyone whose opinion I value more on this general subject than Senator O'Mara's because of his background of experience both in the legislative field and also professionally as a lawyer, and the Senator, of course, knows what the subject is, the very difficult subject, that has been referred to this Commission, and I would merely ask the Senator would he please express his views and then, after that, perhaps the Commission and myself will ask questions to pinpoint them.

SENATOR MURRAY: I would like, if I may, unless I am interrupting a planned train of thought, to initiate the proceedings by asking the Senator whether or not, in his opinion, a code of ethics is sufficient or preferable to a statutory enactment, or whether he would envision a combination of the two in terms of an answer to this problem?

EX-SENATOR EDWARD J. O'MARA: Well, Mr. Chairman and members of this Commission, this, of course, is one of the most difficult problems that any commission could face.

The general objective which you seek to attain and one which the people of the State want to see attained is an ideal that would assure that members of the

Legislature, as well as other public servants, should not engage in any transaction which would bring about a conflict in their duty to the State. This, as said, is a very difficult subject to deal with because it is very difficult to know where to draw the line.

Although this is generally referred to as a conflict of interest discussion, the discussions which I have heard on it go far afield from what could be considered a conflict of interest truly so called.

If we consider, for instance, the members of the Legislature and consider what their obligation is to the State in the performance of the public trust which they have accepted by becoming members of the Legislature, we find that their duty, as I see it, is this - to give their untrammelled, independent, best judgment to any matter which comes before them as members of the Legislature.

That means that in voting on any bill or resolution, or in conducting the business of the Legislature, they should not have any influence work upon them except that which in their honest judgment is for the best interests of the State as a whole.

So in order to have a true conflict of interest, so far as a member of the Legislature is concerned, I suppose that you would have to have a situation where that

Senator or Assemblyman was prevented from exercising his honest, unbiased judgment, from the viewpoint of what is for the welfare of the State as a whole, by the presence of some private motive which is in conflict with the use of that independent judgment. But the discussions which I have heard go far beyond that. They go to the point of whether or not a member of the Legislature ought to engage in a business or a transaction, not because the engaging in that transaction will interfere with the exercise of his judgment as a member of the Legislature, but because perhaps it will unduly influence the tribunal or the officer, or whomever it might be before whom he is appearing, in his judgment, simply by reason of the weight which is attributed to him as a member of the Legislature. Now, that is not a conflict of interest truly so called. That is something broader. That is a question of general ethics. For instance, to take it at its extreme form, the Senate must confirm every Judge who sits in the courts of this State. Now, there is no conflict of interest if a member of the Legislature, who is an attorney, is trying a case before a Judge whose confirmation he voted for; there is no conflict of interest; there is nothing to influence his judgment, so far as the State is concerned, in a situation like that, but the difficulty arises that some people think that maybe a Judge would be unduly influenced in favor of a man who had voted in favor of his confirmation. Well, that, of course, is a very, very extreme situation and carried to

its logical conclusion would mean that no member of the Senate could appear before such a Judge. And, of course, in a lesser degree it would apply to the Assembly, too, because, although the Assembly is not concerned with the confirmation of judges, it might very well be that it would be concerned with the question of whether or not the Judges' salaries should be raised, and that is an important consideration for the Judges as we know from recent experience. So that to delimit and define what we are talking about, I think it is quite necessary to keep in mind a distinction between a true conflict of interest and a general ethical concept of conduct on the part of members of the Legislature.

I saw at the midwinter meeting of the Bar Association a bill which was suggested by the Bar Association, approved after a committee report, and the recommendation that it be sent to the Senate for introduction. I am advised that that bill has not been introduced and that the Bar Association - I might be wrong on that -

SENATOR MURRAY: For the record, Senator, at the request of the Chair of this committee, the introduction of the bill was withheld until such time as it could be discussed here in the light of the anticipated testimony of the Chairman of the Committee on Ethics of the State Bar.

Ex-SENATOR O'MARA: Well, maybe I should not discuss the bill then.

SENATOR MURRAY: No, I think it would be helpful if you

would, because we'd very much like to have your opinion on it.

EX-SENATOR O'MARA: Well, I have a copy of it in its original form, whether or not that will be the form in which the Bar Association will finally introduce it or not, I do not know.

MR. YAUCH: Senator, you know there are two bills, are you referring to the first one?

EX-SENATOR O'MARA: I am referring to the Carpenter Bill.

MR. YAUCH: The Carpenter Committee introduced two bills - the first one had to do with just members of the Legislature, and the second bill that was introduced had to do with all state employees.

EX-SENATOR O'MARA: Well, this is bill Number 1 that I saw. The preamble of it is in these words:

"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 to disclose to anyone or use for personal benefit or advantage confidential information gained by reason of official positions; therefore be it enacted" (and so forth).....

The particular section of the Bill to which I desire to address myself is this - it is paragraph 3 in the Bill as I have it -

and it provides that 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. Is that the clause, Mr. Yauch?

MR. YAUCH: That's right.

EX-SENATOR O'MARA: Well, of course, a provision of that kind would make it absolutely impossible for a member of the Legislature to practice law at all. You will note that the provision is not concerned only with situations in which the State is a case, or that the State has an interest, but it prohibits the appearance of any member of the Legislature before any board or commission or instrumentality of the State in any cause or proceeding. In other words, in a cause merely between private litigants, and that in my judgement clearly includes appearance before a court - "Other instrumentality of the State of New Jersey by whatever name designated" certainly means to me that a member of the legislature could not try a case before a court of this state. To go a little bit further and show the ridiculous reaches of this particular paragraph, the Inheritance Tax Department is certainly an instrumentality or a bureau of this state. Now, I take it that what a man is prohibited from doing himself ^{he} is certainly prohibited from doing

through his partners. So that if a member of the Legislature were a member of a law firm, not only he, but not even his partners under this section, as I read it, could appear before the Inheritance Tax Bureau of this state for the purpose of discussing what proper tax was due from a decedent's estate in an estate which he represented. Now, I was a member of the Legislature here for thirteen years, I had several law partners at the same time and I venture to say that in the course of that thirteen years there were numerous, I know there were, estates of substantial value which my partners had to confer with the Inheritance Tax Bureau on the question of the fixing of the inheritance tax due to the State. There would be such questions, of course, as to whether or not a gift made by the decedent prior to his death was in contemplation of death, and so subject to the inheritance tax, or whether it was not - things of that sort. Then, you notice that this prohibits the appearance before a condemnation commission. Well, in many cases, of course, in a good many cases, the condemning party in a condemnation is the State or an agency of the State, but not in all cases, by any means. Municipalities have a right of condemnation, certain utilities like railroads and other utilities - water companies, I suppose, and gas and electric companies I presume, have a right of eminent domain. For the life of me I cannot see why a member of the Legislature who, for instance, represents X county could not be retained in a condemnation proceeding to try a case before a condemnation commission if, for instance, a municipality in Y county was the condemning party. What difference does it make? I don't think in the first place,

that it is the duty of a legislator, even if the State now is directly a party in a condemnation proceeding, I don't think it is the duty or the obligation of a member of the Legislature to be the general guardian of the financial affairs of the State. I think that duty in a condemnation proceeding devolves upon the Attorney General, or whatever other officer is handling the condemnation for the state agency. The duty of a member of the Legislature is to give his honest and his best judgement on the passage of bills that come before the House, or the performance of such other legislative duties as are prescribed. So that a general prohibition against appearing before a condemnation commission seems to me to be entirely inappropriate. So much for this clause of the State Bar bill.

MR. YAUCH: Do you mind, Senator, if I just interrupt at that point because the subject you just referred to, I think, is quite important and I know that the Commission is going to have to give a lot of consideration to it. Your thought that you just expressed is that you see no objection to a legislator appearing before a commission, or thereafter possibly before a court. What would be ^{your} thought as to a legislator negotiating with a state employee, for example a representative of the State Highway Department, on behalf of a private client as to a proper amount representing the fair value of the property ?

EX-SENATOR O'MARA: I think that a legislator ought to keep out of that kind of proceeding. It certainly doesn't give the

appearance of right conduct, I'll put it that way, for a member of the Legislature to engage in negotiations with a bureau like the State Highway Department for the purpose of fixing a price at which property can be acquired.

MR. MARCIANTE: That has been done, Senator.

EX-SENATOR O'MARA: It has been done, but I do not approve of it, Mr. Marciante. But I do say this, that once it is determined that a price cannot be reached by negotiation then the matter becomes a litigation to be determined as the statute prescribes by trial before a condemnation commission and appeal from that award to the Superior Court of the county. The only reason that I say that a legislator ought to keep out of negotiations with a department subordinates is that it lends to a suspicion that perhaps undue influence might be given by the department employee with whom he was dealing, because of the position of the legislator as a member of the Legislature.

MR. KEATING: Senator, with the permission of the Chairman I would like to ask you one question. I notice that we have run over the time we had set for adjournment. Do I understand that you distinguish between a member of the Legislature negotiating with a state agency or a state department, and a member of the Legislature, who happens to be a lawyer, later on entering into litigation after the failure of the two parties to get together?

EX-SENATOR O'MARA: I do.

MR. KEATING: I gather then that you do not condone the action of a member of the Legislature who is a lawyer, representing

a client against the State after both parties have failed to agree?

EX-SENATOR O'MARA: I do not condemn that, you say?

MR. KEATING: Yes.

EX-SENATOR O'MARA: I don't.

MR. KEATING: I mean you do not actually condemn the action of a member of the Legislature who happens to be a lawyer, representing a client against the State after the State and the party have failed to agree ?

EX-SENATOR O'MARA: No, I do not. I see nothing improper.

MR. KEATING: Thank you.

SENATOR MURRAY: Gentlemen, may we not properly at this point adjourn for luncheon and resume at 2 o'clock.

(R E C E S S)

AFTERNOON SESSION

SENATOR MURRAY: We will resume with the completion of the testimony of Senator O'Mara.

Counsel, I believe that Mr. Keating was about to ask the Senate some questions with respect to the initial paragraph of the proposed bill of the Bar Association which he was examining.

MR. KEATING: Senator, I will withhold my question for the representative of the Senate Judiciary Committee.

SENATOR MURRAY: May I say, Mr. Keating, that if you are withholding it for a representative of the Senate, it may be that you will be withholding it permanently, because I am not sure any will be here.

MR. KEATING: I have no question at the moment.

MR. YAUCH: Mr. Chairman, I think that I interrupted Senator O'Mara, and several questions were asked. So may I suggest that Senator O'Mara go back to the point where he was interrupted.

Ex-SENATOR O'MARA: As I recall, it had to do with a discussion of the bill which was proposed at the midwinter meeting of the State Bar Association, which I have discussed at some length.

It seems to me that that bill would not only defeat its own purpose, because it is far too stringent, but also that it would have the effect, if it were enacted into law, of closing the state service to a very large class of people who would be eminently qualified to serve in the state government, and especially in

the Legislature. If that bill were followed to its logical conclusion, it would mean, in my judgment, that a member of the Legislature could not practice law, could not appear before any courts, could not appear before any agencies of the State and, indeed, as I think I pointed out to you, could not even conduct what we call "an estate practice" because of the necessity of appearing before the Inheritance Tax Department, for instance, to fix the amount due. So the net result of that would be that no member of the legal profession could, if a bill of that kind were passed, serve without violating the provisions of the bill in the Legislature. Many people might think that that was a blessing, but I am not one of them. I think that a fair proportion of the members of the Legislature ought to be from the legal profession because they have the training which should make them of great assistance and of great value in serving in that body.

So it is my judgment that a bill such as that which was proposed, and the introduction of which I understand has been withheld pending the determinations of your Commission, is far too drastic and would not accomplish the purpose for which it is intended. I think I said at the opening of my testimony that this is a very, very difficult subject to deal with. Every member of the public has a right to expect a high standard of ethical conduct on the part of not only members of the Legislature but of all who hold public office. It was said some place, either in a committee report or in the preamble

of the New York bill dealing with this subject, that the public has a right to expect of its public servants morals higher than the morals of the market place, and that is true because, to use a hackneyed phrase but one which is certainly eminently right, a public office is a public trust and one who enters upon the performance of public duties must do it with the conviction that he has to exercise the moral qualities which are not expected perhaps of the ordinary man. On the other hand, in a representative form of government such as ours where the members of the Legislature are selected from the rank and file and a general cross section of the people of the state, it is almost inevitable that some conflicts are going to occur somewhere along the line. How to legislate, how to draw the line, what penalties and what sanctions to impose for infractions of any code that is adopted is an extremely difficult question. The constitution itself, in dealing with the Legislature, indicates some spheres which are prohibited. For instance, if a bill should be passed creating an office or raising the salary of an office, then a member of the Legislature who was in office in the Legislature at time of the passage of that bill is ineligible to occupy either the newly created office or the office as to which the emoluments and salaries have been raised. And that manifestly is for the purpose of avoiding a conflict of interest, in the true sense, in the casting of a legislator's vote on a bill of that kind.

There are specific laws, of course, against bribery, and I can imagine that there are other instances, perhaps, in which

flagrant violation of the duty and the trust which is owed by a member of the Legislature could be proscribed by a specific statute with a criminal sentence or penalty prescribed for the violation. On the other hand, there are so many instances, and so many cases which are really border-line cases where it's a question of deep thought perhaps as to whether or not a particular activity is in conflict with the high standard of public morality which the people have to expect of their legislators, that I do not see how that field can be handled by specific legislation other than to adopt a code of ethics similar to that which was adopted by amendment to the Public Officers' Law of the State of New York; I think that was in 1956 - 54 was it? In a preamble of that bill, as I recall it, they recite that in some instances it is possible to legislate so as to affect certain classes of cases, but those are cases in which there is a probable violation of duty, but that in most cases it's not possible to reach them by specific statutory enactment other than to prescribe a general code of ethics as to which all public servants, whether they be members of the Legislature or members of the Executive Branch of the government, or indeed officers or employees of subdivisions - municipal subdivisions or county government - should be expected to subscribe. The weakness of that procedure is that it is difficult to determine how that code of ethics, so called, can be enforced, and how a violation of the provisions of it can be punished. Even before you get to that point you have to determine who is going to decide whether a particular act is violative of the provisions of that code

of ethics. The Attorney General, I think, this morning pointed out (and I think properly so) that as far as members of the Legislature are concerned, that must be a question for the specific house, either the Senate or the Assembly, to decide with respect to the conduct of its own members.

SENATOR MURRAY: Senator, on that point, if I may interrupt, would you care to comment on the suggestion which we presented to the Attorney General - I'm sorry, I think it may have been to Senator Waddington - I don't recall which, as to the advisability of incorporating some sort of a code of ethics in the rules of the Senate and the rules of the Assembly ?

EX-SENATOR O'MARA: It would seem to me that that would be a very proper thing to do. The constitutional provision (I am just paraphrasing; I don't pretend to remember the exact words), makes each house the sole judge of the qualifications and election returns of its own members, and so an attempt to set up some outside body other than from the membership of the particular house, to judge upon whether or not the actions of a legislator were or were not consonant with a proper code of ethics would seem to me, offhand, to run afoul of that constitutional provision. However, may I say this: I think that in dealing with a violation of a proposed code of ethics, the most potent force would be an aroused public opinion, especially because members of the Legislature must stand for re-election periodically. Some method should be devised of alerting the public, it seems to me, of violations of a code of ethics if it is violated. Insofar as no constitutional difficulties are apparent, I mean by that with regard to members of - let us take the Executive Department - I think that some

kind of a permanent commission to pass upon whether or not there has been a violation and indeed, with the restrictions that were suggested by the Attorney General, to give advisory opinions before the event as to whether or not a proposed act would be violative of the code, would be very helpful and once there had been found to be a violation of the code, that matter I think should be brought to the attention, not only of the superior of the person who is involved, but also to the general public.

Now, I can see that insofar as the Legislature is concerned it might be very difficult, except in extreme cases, to get brother members to pass upon adversely the conduct of a member of a house of the Legislature. I think we must be realistic about that, it would be difficult. But, at the same time, you have there the constitutional provisions, which I would think offhand would require you to restrict the passage upon the quality of the act of the member of the Legislature to the Legislature or some committee of the Legislature designated for that purpose.

SENATOR MURRAY: In addition to what has been said, Senator, do you feel that a code of ethics alone, without some future statutory enactment, would be enough to cover even in a minimal way the problem which we face?

EX-SENATOR O'MARA: Well, a code of ethics would be a beginning, Mr. Chairman, as I see it, but I doubt that it would be of any great effect unless there was some body which could focus public attention upon a violation of the code.

SENATOR MURRAY: Do you have any suggestions as to how that body might be brought into being or who might make the appointments to it, or how it should renew itself once it was constituted?

Ex-SENATOR O'MARA: That is a question to which I have given no thought. It would have to be brought into being by legislative enactment I think, because otherwise it would have no standing whatever, as I could see it. I am not now considering members of the Legislature because, as I said before, I agree with the Attorney General that because of constitutional reasons they have to be treated in a separate way and dealt with by their own house of the Legislature, but I would think that perhaps, either by direct appointment of the Governor or of the Attorney General, a committee of that kind might be authorized.

MR. YAUCH: Senator, that's just what was done. And again, I repeat that I am not suggesting we follow absolutely what was done in New York. But that is the course that was followed in New York. In the case of the permanent Committee on Ethics applying to legislative representatives and employees, the Legislature under the resolution appointed the permanent committee, and in the case of the Code of Ethics having application to the Executive Department, the Attorney General designated the committee.

In the resolution creating both the Legislative Committee and the Executive Committee on Ethics, it was provided that they would be available for advisory

opinions, they'd be available to receive complaints, they'd be available to suggest legislation as they went along. Now, as I understand it, since 1954, when that New York committee rendered its report these permanent committees had functioned and they had issued many advisory opinions and some of the recommendations, gentlemen, have reached a point where they have been formalized by legislation. So that by experience, once you lay let's say a broad groundwork of a code of ethics, even though of itself at the beginning it wouldn't necessarily have an automatic provision for the penalty and so on, but at least you lay a broad groundwork from which you can start to build and create something. The difficulty with this whole subject as I have observed it from reading the material available, Senator O'Mara, is while there has been a great deal of attention given to it and reams written about it, very little has actually been done and at least the procedure adopted in New York lays a basis on which you could build.

EX-SENATOR O'MARA: It seems to me, Mr. Yauch, that that is an eminently logical way to proceed. A committee of that kind would over the course of the years build up a body of precedents on interpretation of the code which would be very, very useful and would in effect, I think, furnish a substantial basis for standards which would see to it that the members of the state government met those requirements.

SENATOR MURRAY: Are there any further questions from members of the Commission?

MR. YAUCH: No, I think the subject as far as I can see it has been pretty well covered.

SENATOR MURRAY: In that case, Senator O'Mara, may we again thank you for having given us so much of your time and repeat that we are most grateful to you particularly in view of your unusual experience as a legislator for many years and as a practicing attorney of great distinction in this state.

Ex-SENATOR O'MARA: Thank you, Sir.

SENATOR MURRAY: Counsel, may we proceed. I see we have several of the Governor's Cabinet here. I'd like to inquire if anyone is inordinately pressed for time we do our best to put them on first.

MR. YAUCH: Mr. Chairman, may I say this. As you know, on the request of the commission I as counsel wrote to the gentlemen present and invited them to stand by at 2 o'clock and that I would call them as the opening presented itself. Commissioner Palmer did call this morning and I had promised him, because of certain commitments, that we could put him on right after Senator O'Mara.

SENATOR MURRAY: We'd be delighted to present Commissioner Palmer next. Commissioner, from a positive viewpoint, as we welcome you to our deliberations, would you have any statement that you would care to make as perhaps a matter of general policy or guidance before direct questions are placed?

COMMISSIONER DWIGHT R. G. PALMER: Well, Senator, in the Highway Department I felt when I came in that it was essential to comb over the practices and policies and procedures. We have instituted within the past three or four years adequate protection,

we feel, against any of our people serving in a dual capacity. While we have a substantial percentage of our people that are otherwise gainfully employed, we draw the line insofar as working for a contractor, for a source of supply of material, acting as consultants to or for municipalities. There is a regulation of non-receipt of gratuities throughout the year, not only at the Christmas period but at other periods. None of our people who have Real Estate licenses have them active insofar as our operations are concerned, and every conceivable deviation from good ethical practices, we have guarded against with procedures and with staff meetings and with reports to employees. However, over a period of time, in all organizations there will be some slight deviation, but as far as conflict of interest is concerned we have had no evidence of that. I might say this in connection with a standard code of ethics - that while most of us realize that people as a rule in high places, who accept public office such as working for the federal government, usually lean over backwards as against catering to their former interest; there are certain classes of people that are greatly influenced by the law and by regulations and that while a code of ethics may fit the majority of people, I believe, in my experience, that certain groups hinge on what the law states and that that has much more of a deterring influence upon any activities in the field of conflict of interest than would merely a code of ethics. Some people look on a code of ethics as merely an expression of faith rather than of execution.

SENATOR MURRAY: Maybe even an expression of hope.

COMMISSIONER PALMER: That's right. And we have all types of people approach us, of course, in the interest of various sources of supply and commodities, and so forth, and whether it is due to the setup that we have or their innate intent, we have had no undue influence brought to bear upon the Highway Department in the settlement of any issues that have come up concerning outside assistance.

SENATOR MURRAY: I have just two questions, Commissioner: The first one is perhaps a general one. In your experience, would you say that a proper deterrent to the beginnings of any conflict of interest might be said to be in proportion to the availability to the public of the documents and files and communications of a given public office? In other words, the more we place things on public bids, the more we allow the public to know that our communication between citizens seeking contracts, for example, and the State, the more it is known that these are open to inspection - would you consider that to be a step toward deterring the creation of conflicts of interest?

COMMISSIONER PALMER: My experience would dictate that open covenants openly arrived at is the ideal way to operate, and a public servant is supposed to function above and beyond the marts of trade. While there are certain ethical standards in the marts of trade and you have deviations therefrom, this is not a gainful pursuit in the sense that it is something that the individual is seeking. His focal point should be service to the public and in performing that, the public should have available to it every way and means of determining

whether or not that man is carrying out his responsibility.

SENATOR MURRAY: My second question, Commissioner: You know that this is a study commission, we are not authorized to investigate specific cases, we are not an investigatory body in any sense of the term but in general have you encountered any areas that might be brought to our attention that are not properly covered by internal codes of ethics within your department or by statutes on the books, in your opinion?

COMMISSIONER PALMER: None that I have observed and we have made a very careful review particularly of our Right-of-Way Department which has always seemed in the past to have been a focal point of interest, we have through our staff meetings, through our changes in routines, through our certification of deputy Attorney Generals of all of our actions, of the employment of outside investigators to come in and investigate our methods of operation, plus access to other states and inviting other states to come in and check up on our operations - all this has placed us in a position where we are still a long way from perfect, nevertheless I feel from all practical standpoints leaves the situation in very good shape.

SENATOR MURRAY: The code of ethics you mentioned before, has that been reduced to writing within your department?

COMMISSIONER PALMER: No. Many of our statements and our restrictions have been in writing. The question for example of gratuities - we not only notify all of our people each year at Christmas time but we also send copies to all of our sources of supply importuning them to hold their fire as well, and I may say that it has been my personal experience on numerous occasions that a number of objects have been returned.

SENATOR MURRAY: Are there any questions from the gentlemen of the Commission?

ASSEMBLYMAN FRANKLIN: Commissioner Palmer, am I correct in understanding that you have no comprehensive code of ethics, internal code of ethics, for the Highway Department? The steps you have taken have been by a series of letters and regulations arrived at sort of separately? Is that correct?

COMMISSIONER PALMER: That is correct. In other words, there is no menu of the items. However, there have been individual memorandums; there have been meetings, and at our staff meetings those matters have been emphasized.

MR. MARKS: Commissioner, in your talk to us, did I understand you to imply or to say that in your opinion some sort of statute might be an additional deterrent to a certain class of people who are otherwise not deterred?

COMMISSIONER PALMER: I feel that in the regulation of public life, be it on the streets or sidewalks of New York, or in office, that a large percentage of the people are influenced by the fear of breaking the law, and I think some of the recent questions that have appeared in the press and on television in the last few days, tied in with Newport, have also indicated that the law is a very paramount feature, even in the higher echelons.

ASSEMBLYMAN FRANKLIN: Commissioner, may I ask you one more question? What enforcement procedure, if any, have you found it necessary to use in dealing with this question of conflict of interest in so far as the employees of the department are concerned?

COMMISSIONER PALMER: Well, starting at the top, the best job can be done by the setting of an example by the executive head, and then of filtering down to the lowest echelons directly the intent of the department and talking to individuals at different levels out in the field as well as in the offices. They finally get the idea that it isn't open season but it's closed season. I think there is no substitute for selection of the right administrators and with the insurance and assurance that they will see that their system of operation filters right down to the men in the field.

MR. YAUCH: Commissioner, on the matter of the informal letters or memoranda that have been the means through which different practices have been adopted, for example with reference to gifts at Christmastime or whatever they were - those general matters that you have referred to - could you, for the information of the Commission, so that we might bear it in mind in determining what, if anything, in addition by way of general application to all state departments, should be done - will you please send me a copy of the letter or memorandum, or whatever it may be that you have used in those cases?

COMMISSIONER PALMER: I would be delighted, counsel.

MR. YAUCH: Now, just one other question, because the members of the Commission have about covered the ground:

Your department has among its many responsibilities I take it, and if I'm wrong, please correct me, the matter of condemning private property for state highway use?

COMMISSIONER PALMER: Correct.

MR. YAUCK: And negotiating a fair price that should be paid for private property taken for that purpose, and you have negotiators and various appraisers, and so on. Would you mind, and no inference is to be drawn from my question at all - it's just a matter of inquiry so that the Commission might consider it together with everything else that is being submitted-- Would you mind giving us your observation as to the effect, if any, in connection with negotiating in the matter of fixing the value of property taken for state use, of a legislator representing a private property owner sitting down and negotiating with one of your representatives? Does it create a situation that is anything but, let's say, normal as it would be if any other person who was not a legislator came in and did the same thing? Just what is your general observation as to that? Now, I am only referring at the moment to negotiation - I am not referring to actual appearance before a statutory condemnation commission appointed by the court, nor am I referring to formal proceedings before the court. I am only referring to the negotiations with your department's representative.

COMMISSIONER PALMER: Mr. Yauch, let me say this - that over a period of recent years, it's been my experience to have relations on a number of occasions with representatives of the Legislature who have been acting as counsel for certain interests, and in no instance has any undue influence or accentuation of their prestige dictated their activities in connection with the matters that were under discussion.

It is quite true that we show, I would say, a little more courtesy to the prestige of the representatives of the Legislature than we would to an attorney who came in simply out of the field of commercial life.

MR. YAUCH: You might give him an earlier appointment or something like that?

COMMISSIONER PALMER: We might do that. But I will say this, that on several occasions emphasis has been placed by the member of the Legislature upon the fact that he did not want his prestige to be capitalized on in any manner whatsoever. If I might paraphrase some of the legal situations, with due apologies to the fraternity, and if I may be a little facetious for a moment, I heard a story the other day: Saint Peter was having a problem. He found that the fence between Heaven and Hell had been torn down in several places, so he called on several of his angels and they arranged to have the Devil come up because Saint Peter felt that the Devil was responsible for it. So the Devil came, and Saint Peter said, "You've torn this fence down." He said, "You can't prove it, Peter." Saint Peter said, "Well, I know that you have and if you don't make good, I'm going to sue you." The Devil said, "You can't sue me." Saint Peter said, "Why not?" "Because," he said, "you can't get any lawyers."

MR. YAUCH: I'm sorry to say that's a very old one.

COMMISSIONER PALMER: I know it. But so am I - and it's still true.

Seriously, we have had nothing that would cause you to have any concern in that field of endeavor so far as we are

concerned.

MR. YAUCH: Well, that was the purpose of my question, to generally get your reaction on the basis of your experience to date.

MR. KEATING: Commissioner, may I ask you a question: I gather that you have defined to the members of your department the area in which they might be in conflict with your wishes.

COMMISSIONER PALMER: That's right, sir.

MR. KEATING: Now, have any of your bulletins in any way spelled out the work that your employees can do after hours?

COMMISSIONER PALMER: Well, we have had so many, many instances - I dare say we have had no general bulletin to cover them, but we have had so many of our people - I would say that generally probably 15 or 20 per cent of our people are otherwise gainfully employed, due to the fact that their compensation is at such a low level, and to keep the wolf from the door they feel the necessity of going outside. We have on many, many occasions had to define whom they could work for and whom they couldn't work for, to insure - for instance, if our employees work for a consulting firm, it's greatly to our advantage, because in that way we get our work done a lot better, since our fellows know what we need. But if they went to work for a contractor, or for someone who is bidding on our jobs, then there would be a direct conflict of interest.

We have also had employees who wanted to serve as consultants to municipalities, but where we give state aid, of course, that would just be contrary to our principles entirely.

MR. KEATING: Well, apparently you have met the issue though, from time to time?

COMMISSIONER PALMER: Oh, yes, the issue comes up as you get new people and as you inherit old people, as well - employees have to find out, apparently with each change of administration, what the intent is and the policy that is designed to influence the operation of a department.

MR. KEATING: Now, please don't misunderstand me. I don't object to this part-time employment. I sympathize with your men, especially the men with engineering degrees. I see Mr. Neeld here and I remember talking to Mr. Neeld a couple of years ago concerning his intention of building up the State Taxation Department with men who are either CPA's or studying for their license. Now, you can't attract that type of employee without compensating him in some way, and you can't stop him from working after hours. An engineer in your department, for instance, might do surveying work on a Saturday or after hours, which is perfectly proper, but it looks to me as if you have been "cook in your own kitchen"; you've handled these problems and, while you may not have set them all down formally, you do in effect have a code of ethics for your department.

COMMISSIONER PALMER: That's right.

MR. KEATING: And that gets back to a feeling that I am coming to, and that is that a lot of conflict could be eliminated by a strong and efficient department head, where he solves these problems himself.

COMMISSIONER PALMER: That's right. And there is no substitute for that.

SENATOR MURRAY: Returning for a moment to the question posed here before about the additional prestige or the additional accord that you might render a member of the legislature ^{who} might be negotiating before your body: Wouldn't it be fair also to say that you would give similar accord to someone were he a member of Congress or of the United States Senate, or perhaps a former Governor? In other words, it would not necessarily be limited to members of the Legislature.

COMMISSIONER PALMER: And also it is purely a personal thing. It has nothing to do with the business end whatsoever. It's a courtesy that you extend to certain people, and in order to make certain that it is a courtesy that is being extended, you don't apply it horizontally with everyone.

SENATOR MURRAY: Conceivably, even a clergyman, were he involved, would receive the same courtesy.

COMMISSIONER PALMER: No question about it.

MR. MARCIANTE: Or a member of the Appropriations Committee.

COMMISSIONER PALMER: That's a little subtle. I've been that way but I don't think it's done me a bit of good.

SENATOR MURRAY: Are there any further questions from counsel or the members of the Commission? If not, then ^{we} are very grateful to you, Commissioner Palmer, for having come here.

Counsel, will you call the next witness? It might be well to determine which one is more in a hurry than the others and try to give as much courtesy as you can.

MR. YAUCH: I talked with Treasurer Neeld or his representative and more or less made quite a definite date for this after-

noon, so if you would care to, we would be glad to have you step up, Mr. Neeld.

AARON K. NEELD: For the record, Mr. Chairman and members of the Commission, my name is Aaron K. Neeld, Treasurer of the State of New Jersey.

Notice of this meeting reached me this morning when I reported after a two-weeks vacation, so I am very sorry to report that I am not very well prepared to offer any suggestions in relation to a proposed bill or statute on conflict of interest. It may be helpful, however, if I were to introduce into the record two regulations of the Department of the Treasury, a questionnaire, and perhaps refer to one statute, and also just touch lightly on proposals for a code of ethics for at least the Department of the Treasury.

Now, taking them in their order, two regulations - one was issued on December 30, 1954, and I have prepared six copies for the use of the Commission - and the second on July 2, 1956. The first regulation was issued by former State Treasurer Archibald S. Alexander, and the subsequent one by Deputy State Treasurer Robert L. Finley. I don't believe it is necessary to go into great detail as to the contents of these directives. They are addressed, of course, to the employees of the Department of the Treasury and they deal specifically with conflict of interest, or possible conflict of interest, of those employees in discharging their normal state activities.

The third, for the record, is a copy of a questionnaire which went to the 1300 employees of the Department of the

Treasury on July 2, 1956. Extra copies of that questionnaire are also being submitted.

Along the same line, I would like to direct attention to a regulation, officially known in the Secretary of State's Office as Regulation I T 24, which controls the activities of the 21 District Supervisors and the 4 Special Investigators of the Transfer Inheritance Tax Bureau, which is in the Division of Taxation in the Department of the Treasury. That regulation is directed toward them specifically, although it applies to all of the employees of the Inheritance Tax Bureau. The special reference to the District Supervisors and the Special Investigators is because of the fact that they are part-time employees and for the most part are members of the bar, and this regulation deals specifically with their authority to engage in a matter which may involve an inheritance tax proceeding. Unless the Committee so desires, I'll not go through the regulation in detail but will submit six copies of that for the record.

MR. YAUCH: I think that will be fine.

MR. NEELD: I would like also to direct attention to Chapter 48 of the Laws of 1954. That act is in the New Jersey Statutes Annotated, 52:34-19. Perhaps it would be worth the time to just read this section of the statute. It's brief and I think directly to the point. It relates to all employees in the Department of the Treasury. The statute is being quoted:

"The payment of any fee, commission or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, whether or not in connection with any purchase, sale or contract, to any person employed by the State in the Department of the Treasury, or to any other person in the employ of the State having any duties or responsibilities in connection with the purchase or acquisition of any property or services by the State or any department, commission, authority, agency or instrumentality thereof, by or on behalf of any seller or supplier who has made, negotiated, solicited or offered to make any contract to sell or furnish real or personal property or services to any department, officer, commission, authority, agency or instrumentality thereof, is hereby prohibited. Any person offering, paying, giving, soliciting or receiving any fee, commission, compensation, gift or gratuity in violation of this section shall be guilty of a misdemeanor."

Now, while there is no specific code of ethics adopted to date by the Department of the Treasury, there have been several proposals for incorporation in such a code. I have those proposals available only in one copy. I shall be glad to make the additional copies that are necessary for the members of the Commission, or I will be glad to put on the record at this time the proposals, which probably number eight or nine.

SENATOR MURRAY: I think we would appreciate your making available additional copies to us which we could include as an exhibit for today's report, unless you wish to comment on any one of those points in the course of your presentation.

MR. NEELD: They are all closely related, Senator, and once you touch one, I guess you had better touch them all or it leaves the picture rather incomplete.

SENATOR MURRAY: Well, I'll leave it up to the

discretion of the members of the Commission as to whether to have it read at this point, in addition to its being included as an exhibit.

(Discussion of the record)

SENATOR MURRAY: It will be submitted, then, as an exhibit, Counsel.

MR. NEELD: I believe that about covers the matters that I was able to get together in the short time available. However, I'll be glad to answer any questions.

MR. KEATING: Mr. Neeld, apparently you or your predecessors have seen the necessity for bulletins to your own people, outlining possible conflicts of interest. Do you feel they are adequate and that you have enough back of you through the issuance of these regulations, or would you desire legislation on it? Do you think it is a matter that you can handle yourself, or that you have to have supplementary legislation?

MR. NEELD: Well, perhaps legislation makes the administrator's position a little more positive and a little easier to enforce. I do believe, as a practical matter, that a code of ethics within a department, with strict enforcement, will accomplish pretty much the same result. After all, you are trying to ferret out improper action on the part of a state employee, and I believe that can be done under departmental regulations, which of course practically every department head has the authority by statute to adopt.

I might point out that the questionnaire which I have mentioned and incorporated in the record was sent to

1296 Treasury Department employees. Only in the case of 180 was there an indication of outside activity on the part of the employee; that is, extra activity beyond his state service.

MR. YAUCH: Some other employment, you mean, or means of livelihood?

MR. NEELD: Yes, sir, or perhaps a partner in a partnership or a stockholder in a corporation.

Only in the case of three of the 180 did we feel that there was any possibility of conflict of interest, and in those cases we brought the situation to the attention of the three employees involved, and those outside activities were terminated immediately in so far as they could possibly come in conflict with the employee's state duties.

MR. KEATING: Well, you have demonstrated that you are aware of the problem, certainly. Now, do you feel that at any time you have been hampered in doing a good job by the lack of legislation?

MR. NEELD: Well, to a certain extent we have legislation, as I mentioned - Chapter 48 of the Laws of 1954, although that does not deal completely with the question of conflict of interest. It deals more with the question of bribes and favors to employees to encourage more favorable treatment. A code of ethics, of course, should be far more inclusive than the provisions of the statute. I believe that perhaps law on the subject would be helpful to the department head. Now, whether there is a difficulty there of so drafting legislation as to have reasonable application to 14 principal departments, all with their special problems, I don't know,

but certainly some broad general principles could be laid down, which I think we all recognize are necessary if we are going to prevent conflict of interest and the possibility of public opinion adverse to the public employee.

MR. KEATING: Well, why would you want that legislation? To strengthen your hand, or to clarify the situation?

MR. NEELD: I think to strengthen the hand of the administrator. Now, of course, on the question of clarification, that would all depend on how broad the statute is.

MR. MARCIANTE: Do you have the same problem that Mr. Palmer spoke of, dual job-holding because of low compensation?

MR. NEELD: Well, I don't know that all 180 engaged in these outside activities solely because they were poorly paid by the State, but I would say that it's quite common in the lower levels or lower pay scale levels for employees to take outside temporary overtime employment to augment their family income.

SENATOR MURRAY: Mr. Neeld, do you envision the code of ethics proposals which you are going to submit to us as applying also to any non-remunerative advisory board which may operate under your department?

MR. NEELD: No, sir, that had not been contemplated, Senator.

SENATOR MURRAY: Can you conceive that any of the activities of these boards might very well generate severe conflict of interest?

MR. NEELD: That could well be.

SENATOR MURRAY: Could you suggest to us any way that we might approach that problem?

MR. NEELD: No, sir. Frankly, you have raised an entirely new line of thinking in my mind. I had not given any thought to the non-salaried advisory council or committee. We have many of them. Some meet regularly, some are purely just advisory groups that meet only on call. I think it might be very difficult to handle that problem.

SENATOR MURRAY: Are you guided in major decisions under the present setup by any of the advisory groups within your jurisdiction?

MR. NEELD: Well, I am thinking principally at the moment of the Investment Council. That certainly has broad powers and is within the Department of the Treasury, although that is not subject to my supervision. It's an autonomous agency.

SENATOR MURRAY: We have been severely cognizant of some of these autonomous or semi-autonomous agencies as somehow being in a no man's land with respect to the jurisdictions to which they are attached, and from your testimony and from what has been submitted by others, it appears that there is a considerable area of very vital influence which ~~these~~ groups do exert and, conceivably, the ~~problem of conflict~~ of interest is quite important. We just wondered if you would have, or perhaps others might be able to give us some suggestions as to how to cover that in the course of our study.

MR. NEELD: I would certainly be glad to think about that just a little more and drop counsel a note on that subject, because I must confess that you have taken me by surprise. I can see the importance of it. Although I would like to emphasize that my relationships with these councils and commissions and committees have been very enlightening, the time that these gentlemen and ladies are willing to spend without compensation in the State's interest as a public service is really surprising, and I am thinking particularly at the moment of the Investment Council.

ASSEMBLYMAN FRANKLIN: Commissioner, could you tell us approximately what percentage of the employees under your jurisdiction are engaged in gainful employment outside of the activities of your department?

MR. NEELD: What percentage?

ASSEMBLYMAN FRANKLIN: Roughly.

MR. NEELD: It's 180 to 1296. In many of those cases that I include within the 180, the employment is very casual. They answered the questionnaire to the best of their ability and I think leaned over backward to make sure that the facts were all properly stated.

MR. YAUCH: Mr. Neeld, the Inheritance Tax Division comes under your supervision, does it not?

MR. NEELD: Yes, sir.

MR. YAUCH: What other similar divisions are there that come under your general jurisdiction?

MR. NEELD: Well, the Department of the Treasury has eight divisions. The one in which the Inheritance Tax is located is the Division of Taxation. Then there is the

Division of Purchase and Property, the Division of Tax Appeals, the State Racing Commission, the Division of Investments--

MR. YAUCH: That seems to be enough.

MR. NEELD: Well, it's not eight. The Division of Pensions - and a very important division, the Division of Budget and Accounting. That probably accounts for the eight.

Now, in the Division of Taxation, about which you inquired particularly, there are nine bureaus - the Cigarette Tax Bureau, the Corporation Tax Bureau, the Motor Fuel Tax Bureau, Alcoholic Beverage Tax, Public Utility Tax, Local Property Tax, Outdoor Advertising Tax - Well, again, maybe I have missed one or two.

MR. YAUCH: What, Mr. Neeld, is your impression with respect to individuals who may have business with any of the divisions that come within your jurisdiction being represented by a state officer, a legislator? Were you here when I inquired of Commissioner Palmer on that general subject?

MR. NEELD: Yes.

MR. YAUCH: Then you have in mind the purpose of my question as to what your experience has been in that regard. I recall Commissioner Palmer stating that he didn't know of a single instance where there had been a situation where the position of the State had been prejudiced because of any undue influence by a state legislator on, let's say, one of the employees in the department who had charge of a particular matter.

MR. NEELD: I should say the situation is exactly the same in the Department of the Treasury and especially in the Division of Taxation, where we meet with the public every day - corporation taxes, inheritance taxes. In fact, I think that when a Senator or Assemblyman appears as counsel for a taxpayer, the state employee is, well, extraordinarily anxious to see that no special consideration is given other than, of course, the courtesies of the office in the matter of fixing special time, or something of that sort. But when it comes to dealing with the question at issue, I would say it makes no difference whether the client is represented by counsel who may be a legislator or not.

SENATOR MURRAY: Mr. Neeld, I wonder if you would give us your views on another subject which was brought to the attention of Commissioner Palmer. That concerns the availability to public scrutiny of documentation within some of these autonomous agencies or these subdivisions which may be attached to your jurisdiction or in a quasi-autonomous situation. Has it been your policy, or would you recommend that the maximum availability to the public be accorded to such important documents as may affect large financial transactions of insurance or other matters of interest to the State?

MR. NEELD: Well, there are two areas and they are in conflict. Take first the question of taxation. As you gentlemen who are attorneys are well aware, the records of the Division of Taxation, for the most part, are confidential; they are privileged communications, and they should be that

way, because we have the full financial status of every deceased person in the State of New Jersey. That should not be open to inspection of the public. It would hamper considerably the matter of the administration of the inheritance tax law and particularly, also, the corporation tax law.

Now, on the other hand, in the Division of Purchase and Property, not only by law but by administrative practice we make available to the public every possible fact that can be made available for the purpose of informing the public when contracts are to be let or bids are to be received. We do that publication, of course, on any item over \$2500 unless there is a specific exception which may be covered by statute.

SENATOR MURRAY: I have no further questions at the moment, counsel.

MR. YAUCH: So far as I am concerned, Mr. Neeld has covered the ground that I had in mind he would be helpful to us on.

SENATOR MURRAY: Are there any further inquiries from members of the Commission?

If not, we will terminate Mr. Neeld's testimony, expressing our appreciation to him for having given us this much of his time and reminding him that we will await the exhibits that he has promised to forward to counsel when they are prepared.

MR. NEELD: Most of them I will leave right here today. The others I will submit.

SENATOR MURRAY: May I mention for the record that, in order to keep our testimony clear today, I think it would

be better to have these exhibits merely referred to in the body of our report of today's hearing and annexed at the end rather than to introduce them in full as they are presented.

MR. YAUCH: Yes, I think that would be better because, otherwise, the record is becoming quite lengthy anyway, and you gentlemen can refer to the exhibits when the occasion arises.

SENATOR MURRAY: Otherwise the reading of the testimony by the Commission would be considerably interrupted in flow.

MR. YAUCH: Then we will follow that course.

SENATOR MURRAY: Who is our next witness, Counsel?

MR. YAUCH: As you apparently know, I invited Commissioner Holderman of the Department of Labor and Industry of the State of New Jersey. I invited him to appear here as a head of a State Department to give us his views, and I am very glad that Commissioner Holderman is here, and I am quite certain that he will be very helpful to us.

SENATOR MURRAY: Commissioner, do you have a prepared statement of any kind?

CARL R. HOLDERMAN: No, I have not. I just have some notes, Senator.

MR. YAUCH: Commissioner, you heard Mr. Neeld and Commissioner Palmer give their general observations. Suppose you go along that line, and then when you have finished, if there are any questions that I have or suggestions I will put them to you.

COMMISSIONER HOLDERMAN: Well, gentlemen, we have had a considerable amount of investigation in our Department of

Labor and Industry from the time I took office and found a considerable amount of conflict of interest. Some of the conflict of interest overlapped into probably illegal practices as well; for example, in the Division of Employment Security, where a considerable amount of money was expropriated from our Temporary Disability Insurance Fund. There was a conflict of interest in the Director of that division holding one job as President of a bank and another job as the Director of the division and, I believe, a member of the Commission Investment Council at that time.

MR. YAUCH: You have reference, Commissioner, to the case that was recently decided by Judge Hughes?

COMMISSIONER HOLDERMAN: Yes - which I suppose contributed substantially, the conflict of interest contributed substantially to the opportunity of transferring these funds.

We found also, of course, that there was a considerable amount of outside employment by employees of that department where there was a conflict of interest, particularly in its auditing section, where the chief auditor and the chief of the bureau of accounts carried on private practice for individual employers who dealt with the Division of Employment Security and made contributions to it. Here, again, it was not only a question of conflict of interest but even of the use of state time in doing their private business. And that stemmed all the way down through the auditing department. As a result of these practices and as a result of the investigation which was made by the Attorney General, we came to the conclusion that we ought to make it clear that these practices must be abolished, the individuals concerned must

not take jobs that were in conflict with their state employment, even though probably the cause, on a lower level at least, was the need for additional family income. They were paid very low. And so, on January 19, 1956, we put out an order or the Director of that Division was instructed to put out an order, a copy of which I will file with you, respecting outside business activities and employment. This was put out as a result of a questionnaire that we sent to all employees above the \$180 increment bracket, asking that they list their outside business activities and income, in which we found some hundred odd - I have forgotten the number exactly - of the employees had some outside activity.

MR. YAUCH: Out of how many?

COMMISSIONER HOLDERMAN: Well, I just couldn't quote the number because the cut-off line was the \$180 increment bracket; it was the professional level. And out of which we found that there were 41 of the employees in that division who had outside business activities of some kind that conflicted with their position with the State. So this order was put out to all the employees of that division concerning it. We also--

MR. YAUCH: Suppose, Commissioner, just as a matter of record, I refer to it: This is on the letterhead of the Division of Employment Security, Office of the Director, dated January 19, 1956 - "Order to All Employees," and it is signed by Mr. John J. Yencik. Then there is a second order put out July 10, 1956, consisting of two pages, signed by John J. Yencik, and a copy of a printed questionnaire

that went with this second order.

COMMISSIONER HOLDERMAN: At about the same time, or rather under date of March 15, 1956, we also put out an order for all other divisions within the Department of Labor and Industry, a copy of which I file with you also, which is similar to the copy put out to the employees of the Division of Employment Security, respecting their outside business activities and employment. I felt sorry for some of these people who needed the extra income to carry on their family activities, but nevertheless the practice had to be stopped.

We also found in our Workmen's Compensation Division that there was a general acceptance of the idea that State Medical Examiners could practice for respondents. A very substantial number of them were on the payroll or were drawing remuneration up to, well, up to a very substantial amount from insurance companies while practicing for the State as a State Medical Examiner. Obviously, this, consciously or subconsciously, we felt would not permit them to exercise the impartial judgment on workmen's compensation cases that State Medical Examiners are required to exercise in their work. So, after long discussions with them and after submitting the question to the Attorney General, and receiving an opinion under date of January 23, 1956, a copy of which I have here, we arrived at an agreement with the State Medical Examiners as to where conflict of interest ended.

Now, here we had an unusual situation. Of course, State Medical Examiners, as you know, only practice part

time. They are only required to practice part time with our Department, and the balance of their time, of course, is taken up by private practice. And a substantial part of some of the private practice of some was this insurance business which they had. We did finally arrive at an agreement that restrained them from practicing for respondents except in emergency cases, and they were allowed to take on emergency cases provided they immediately informed in writing the Director of the Division about the case and about the fees they received for it, and so on and so forth, so as to insure that they would not be called upon to testify, or rather to examine in that particular case.

I will leave with you also copies of the correspondence and of the opinion of the State Attorney General concerning this.

MR. YAUCH: As Commissioner Holderman stated, the letter on the subject he just referred to is addressed to Ned J. Persekian, Deputy Director, and is dated March 7, 1956; and Administrative Directive No. 3 is dated September Term 1956, and the Attorney General's opinion, on the letterhead of the Attorney General's Office, is dated January 23, 1956.

SENATOR MURRAY: And you accept those as exhibits, Counsel?

MR. YAUCH: Yes.

COMMISSIONER HOLDERMAN: Then of course, we found that in the Bureau of Engineering and Safety there were rather loose practices that included the Director of that Division who also was engaged as a consultant by at least a dozen corporations in the State of New Jersey. This we discovered

even after the directives had been put out. Of course, he's no longer with us. This has been my experience since taking office in 1954.

MR. YAUCH: Commissioner, in view of your experience since you have been in office, what is your view as to the present laws as you know them, the present statutes? Are they adequate or inadequate, in your opinion, for the proper administration of the various ramifications of your office?

COMMISSIONER HOLDERMAN: Well, I'm not a lawyer. I agree not to practice law if somebody else doesn't organize a union.

MR. YAUCH: Well, I mean, your practical experience.

COMMISSIONER HOLDERMAN: Well, I think that much depends upon the department head and whether or not he issues the proper directives and sees to it that they are properly carried out by his subordinates.

MR. YAUCH: In other words, it's not the volume of the law but the proper administration or follow up.

COMMISSIONER HOLDERMAN: It can be done that way, of course.

SENATOR MURRAY: Commissioner, would you think it advisable that the Legislature pass a statutory requirement compelling department heads to draft the appropriate code of ethics for their own jurisdiction?

COMMISSIONER HOLDERMAN: Yes, I think it would strengthen it considerably, and I think that it would reaffirm, let us say, the directives that have already been issued and make clear to state employees that on acceptance of employment with the State they must abandon any other

interests they might have that are in conflict with the state's interests.

Incidentally, the questionnaire, for example, that has been drawn up for employees in the Division of Employment Security is required to be signed by all new employees in that department above the \$180 increment level, as well as by those who were on the payroll before.

SENATOR MURRAY: Would it be helpful to you, Commissioner, as a department head, if there existed some sort of council or commission to which you and other department heads could refer for central guidance in problems of this nature?

COMMISSIONER HOLDERMAN: Well, I think if you established by law some code of ethics, the Attorney General would give us proper opinions as to how far it went.

SENATOR MURRAY: Are there any further questions by members of the Commission?

MR. KEATING: I would like to ask a question:

Commissioner, I want to be fair with you; I made a note of a question which I intended to ask each member of the Governor's cabinet and just discovered it now, so unfortunately you are going to be picked on to that extent.

Our previous witness made a very strong plea for a requirement for a candidate for an elective office or an appointee, and that requirement was for a full disclosure of his financial holdings and his sources of income for the preceding two years. Now, do you think that such a requirement would help, or hinder the obtaining of good men for jobs such as you have, and Treasurer Neeld, and Commissioner Palmer? How do you feel about it?

COMMISSIONER HOLDERMAN: No need for me to inquire who it is. You are now asking me as Commissioner of Labor. I have always felt that there ought to be some certain financial information available to the State on the part of people who are appointed or elected to public office, some kind of information available, not necessarily for the public but certainly available to, let us say, the Legislature or any kind of an Ethical Conduct Committee that might be set up. I think too often there is too little of that information available, which people are inclined to hide behind. I favor a study of some kind of provision of that sort that would be available, not necessarily as a public document but certainly available to some kind of an Ethical Committee.

MR. KEATING: Well, you certainly wouldn't go as far as the witness requested, and that is to have a full public disclosure.

COMMISSIONER HOLDERMAN: No, not necessarily.

SENATOR MURRAY: Commissioner, would you favor that such information be given under oath?

COMMISSIONER HOLDERMAN: I don't know.

SENATOR MURRAY: I was wondering what would be done about the problem of the Fifth Amendment candidate for public office.

COMMISSIONER HOLDERMAN: You see, we have had some pretty bad experiences in the labor movement. I am now speaking as the ex-President of the CIO and not as Commissioner of Labor, where we have found prosecutors, for example, in a strike situation who appear for the

employer, when his obligation as a prosecutor might very well be to prosecute some of these same people, and it certainly is unfair for him to appear for an employer in a case involving a dispute between labor and industry, where he, himself, may be involved as a public officer carrying out the law. Now, it is often years after that you discover that such is the case. But it certainly is unfair in any kind of a dispute of that sort to find a person in such a position exercising his influence in behalf of an employer.

MR. YAUCH: You feel that that is a typical case of conflict of interest?

COMMISSIONER HOLDERMAN: Yes, I do, very strongly.

SENATOR MURRAY: Are there any further questions, gentlemen? Counsel?

MR. YAUCH: Just one more, Commissioner.

This is a question that I have asked the other gentlemen representing the heads of departments of the State, and particularly it might be important to ask you the question because within your department we have Workmen's Compensation which involves judicial functions:

Among the various suggestions that have been given to this Commission, both by way of recommendations and suggested legislation, has been one that State legislators should not be permitted to practice law before any state agency, etc. Now, just generally, what is your impression as to whether or not the administration of justice is prejudiced in any way by, let's say, a legislator who is both a part-time officer of the State and a practicing attorney appearing and representing clients in

workmen's compensation cases?

COMMISSIONER HOLDERMAN: Well, I really don't have any opinion. I doubt very much whether there could be much influence one way or the other because of the limited amounts of money available, and so on.

MR. YAUCH: Well, not only that, but all the decisions in the Workmen's Compensation at the lower level, the original decisions, are subject to review, appeal, and so on; aren't they?

COMMISSIONER HOLDERMAN: Yes, they are.

MR. YAUCH: Then I take it, that quite generally, even though you haven't studied the question, you wouldn't say that that was any problem so far as workmen's compensation is concerned?

COMMISSIONER HOLDERMAN: No, I don't think it is.

MR. YAUCH: I have nothing else.

SENATOR MURRAY: Thank you very much, Commissioner Holderman.

Counsel, who is our next witness?

MR. YAUCH: Commissioner Kelly.

SENATOR MURRAY: Before Commissioner Kelly testifies, I would like to announce that our next meeting will be at 10:30 A.M. in these chambers on Friday, September 27th.

Now, with that, we welcome Commissioner Kelly.

MR. YAUCH: Commissioner Kelly, you have been invited to appear here, just as we have invited other state department heads to be here this afternoon, in order to give us your general views as to the subject that has been referred to

this Commission; namely, the matter of conflict of interest between the duties of a state officer or employee and his representation of private interests. Have you prepared any statement or, if not, will you please explain just generally what your views are with respect to your own particular department of the State Government?

WILLIAM F. KELLY, JR. (PRESIDENT, STATE CIVIL SERVICE COMMISSION): Yes. I have no prepared statement. The subject of conflict of interest is one which has not arisen within the Department of Civil Service. It's a small department. I might mention that in sitting and listening to the previous witnesses, it was brought out, I think, by Commissioner Holderman that one of his employees, who was found to be involved in a conflict of interest, was removed. And that was by virtue of the Civil Service Act and the rules made thereunder. So that there are today disciplinary measures which may be taken under the law against an employee who acts in some way inimical to the interests of the State.

The only manner in which I think our department or commission might be involved is that which I have heard here today, and that is legislators appearing before our commission on behalf of employees who have been disciplined, either by suspension or removal. We have had only, I think, a couple of instances of it and I know the next question would be, "Because he is a legislator, does he receive a more favorable decision from the Commission?" Needless to say, the answer is no. He is treated, I think, just as he would be if he appeared in a court of law. He is a member of one branch

of the government appearing in another branch, and there is no favoritism, of course.

SENATOR MURRAY: Commissioner, would you be in a position to recommend to this Commission any amendments or changes to the present Civil Service statutes that might assist in tightening up any loopholes wherein conflict of interest could arise?

COMMISSIONER KELLY: Well, I have heard discussed a code of ethics. Of course, conflict of interest in a code of ethics, I think basically, comes to a matter of the individual's integrity. There are definite cases where one must know that it is a conflict of interest, and there are other cases which might be of a doubtful nature. I would feel that a code of ethics might very well give some guidance or direction to a public employee as to whether or not there might be a conflict involved in whatever action he intended to take.

MR. MARCIANTE: Commissioner, you mentioned a moment ago that there had been a removal based on civil service regulations in the Department of Labor; is that right?

COMMISSIONER KELLY: Yes.

MR. MARCIANTE: How often are those regulations invoked? What I am trying to get at is this: Is it sufficient to really be a factor?

COMMISSIONER KELLY: Is is what?

MR. MARCIANTE: Is it sufficiently invoked to be a real factor?

COMMISSIONER KELLY: Well, yes, the disciplinary measures of the civil service act are invoked quite often.

I might mention that the Commission today has a calendar of some 70 or more matters pending before it.

MR. MARCIANTE: Of disciplinary action being considered?

COMMISSIONER KELLY: Yes. It's an appeal from the action of the appointing authority.

MR. MARCIANTE: Of course, that's acted upon by the Commission itself.

COMMISSIONER KELLY: That's right. The department takes the initial action of removal or suspension and the employee has a right of appeal to the Civil Service Commission, and from the Commission he has a right of appeal to the Appellate Division of the Superior Court, and from there to the Supreme Court under proper circumstances.

SENATOR MURRAY: Are there any other questions of the Commissioner?

ASSEMBLYMAN FRANKLIN: Commissioner, could you give us any idea, and this may be a foolish question - I don't know - whether or not any of the state employees under civil service are engaged in outside part-time activities and, if so, what the approximate per cent is?

COMMISSIONER KELLY: I could not.

SENATOR MURRAY: Some of the problems have included conflicts of interest with respect to a profession or sometimes with respect to a financial situation of one kind or another. I would imagine that these would apply only in a limited sense to your department. A. Yes.

SENATOR MURRAY: But I am wondering whether or not conflict of interest from a purely political or partisan situation might not be a vexing ^{problem} to you and, if so, would

you care to comment on how it might be tightened up?

COMMISSIONER KELLY: I think such a problem has a potential. But during my term for three years and eight months, there has been no such problem.

SENATOR MURRAY: Would you feel that it was the obligation of this Commission to make recommendations of such a nature, particularly since your work embraces all levels throughout the State, probably more so than any other single department of State Government? Is there anything that you could suggest or that you feel that we would profitably be able to study in that line?

COMMISSIONER KELLY: At this time, I could not, Senator.

SENATOR MURRAY: Counsel, I have no further questions.

MR. YAUCH: Senator Murray's question dealt with what I was about to inquire of you. It would seem to me that the function of your department being to hear cases after the various divisions of the State, state departments, and so on,-- the division heads have either suspended or discharged an employee, you have had experience with the reasons that have been the basis for the suspension or discharge of state employees over the years. Now, in view of the fact that that is one of the functions of the Civil Service Department, do you believe, upon reflection and consideration, that you could be helpful to this Commission in outlining, let's say, a broad code of ethics or a code of ethics that at least we could give consideration to?

COMMISSIONER KELLY: I would certainly be very happy to cooperate in any way I can.

MR. YAUCH: Well, will you please do that within the course of the next week or ten days or so?

COMMISSIONER KELLY: Yes.

MR. YAUCH: And send it to me?

COMMISSIONER KELLY: Fine.

MR. YAUCH: And, if you will - I guess you have a copying machine - make it in six copies?

COMMISSIONER KELLY: I shall do so.

MR. YAUCH: Thank you very much, Commissioner. We appreciate your coming.

SENATOR MURRAY: Counsel, I understand that is the end of our list of invited witnesses. Are there any others who wish to testify?

(DISCUSSION OFF THE RECORD)

SENATOR MURRAY: Counsel, will you please produce the next witness and identify him for our record?

MR. YAUCH: Yes. Mr. Chairman, this is Mr. Herod E. McLeod of Atlantic City, New Jersey, who states that he would like to express some views in connection with the matter of conflict of interest. He has also referred to other subjects.

I would appreciate it, Mr. McLeod, if you will realize that we are very glad to listen to anything that you have to say with reference to the subject that we are concerned with, but we would like you to confine yourself to the matter of conflict of interest.

HEROD E. McLEOD: Very well.

Counsel, Mr. Chairman, and gentlemen: I thank you very much for two or three minutes. As a former law enforcement officer and a director in certain fields of law - I am not a lawyer, now; I am a layman - I have been very close to the courts of some states and to the law in federal-state cases. So, therefore, I feel that a background of thirty years' experience in investigating various cases in state and federal areas makes me quite well qualified to give one or two observations.

SENATOR MURRAY: Would you identify the experience that you have had as a law enforcement officer, please, Mr. McLeod?

MR. McLEOD: Director of Law Enforcement in the Metropolitan Police Department, New York State.

MR. YAUCH: Just what do you mean by "Metropolitan Police Department in New York State"?

MR. McLEOD: Well, that's what it's called.

MR. YAUCH: Do you mean New York City Police Department?

MR. McLEOD: New York City. That's what it's called.

MR. KEATING: Mr. McLeod, were you a member of the Police Department of the City of New York ?

MR. McLEOD: Yes, sir.

MR. KEATING: What was your position?

MR. McLEOD: A patrolman, to begin with, and then a Special Investigator.

MR. KEATING: Are you a uniformed policeman in the City of New York?

MR. McLEOD: At times.

MR. YAUCH: Do you have that position at this time?

MR. McLEOD: I do not. That was thirty some years ago.

MR. YAUCH: Well, this position that you referred to, you held 37 years ago?

MR. McLEOD: Thirty some years ago.

SENATOR MURRAY: In other words, I think, Counsel, Mr. McLeod is telling us that thirty some odd years ago he was a member of the New York City Police Department. Is that correct?

MR. McLEOD: That's right.

SENATOR MURRAY: Do we have his full address as of today, Counsel? I wasn't sure I heard where Mr. McLeod comes from. I think he said Atlantic City.

MR. YAUCH: Mr. McLeod gave me his full address. It is 1815 Hummock Avenue, Atlantic City, New Jersey.

What is this number you have here?

MR. McLEOD: That's 4-0896; that's my telephone number.

MR. MARCIANTE: What do you do now, Mr. McLeod?

MR. McLEOD: I have my own business. I am formerly a newspaper man and I have my own business now in Atlantic City. I am a parking lot operator and owner.

I have no partisan views to give out. Conflict of interest should have, as a matter of public policy, the force of law. In order to protect the public I believe that availability of information in and on government should be made to the public. The Hoover Commission brought out a considerable body of study concerning the operation of government. My next thought is that in the federal government some lawyers, or practitioners are not allowed to come and practice before an agency until after two years have expired. I think it was the late President Roosevelt who made it very emphatic upon that line when he summarily eliminated the practitioner. On the other hand, you are familiar with the James J. Walker case under the late Mr. Roosevelt: "Disclose or resign".

SENATOR MURRAY: That's Franklin Roosevelt?

MR. McLEOD: Yes. You are also familiar with the actions of Governor Dewey in instances where members in administrative positions held certain interests in certain operations that did not prove healthful to the state as a whole. I don't know whether or not you are trying to find out what should be done to improve the attitude of the general public towards public officials as such.

SENATOR MURRAY: Well, we are not particularly responsible for improving the attitude of the public toward public officials, Mr. McLeod, but our directive requires us to study how to eliminate possible conflict of interests which would be harmful to the general public.

MR. McLEOD: In that instance may I refer you to a person who had an administrative position in the Eisenhower administration but who worked both sides of the fence, in the language of the streets, and the President made it very emphatic that he was not very happy with the situation - that was a Boston banker in the Dixon-Yates case.

I believe that a strong executive such as Mr. Eisenhower, or the President I should say, the late Franklin Delano Roosevelt and Governor Dewey in the exercise of their duties set the example. Then I believe in all good conscience and sincerity that once the example is set there should not be any qualms as to the line of demarcation whether we should impugn the honesty and integrity of one or should we compound the crimes of commission and omission of the other.

In conclusion I would be very grateful to the counsel and the chairman and the commission as such, if in the course of their study they would allow some documented cases so that they could predicate whatever legislative procedure they recommend upon these documented cases thereby saving the reputation of persons, firms or corporations. Thank you very much.

SENATOR MURRAY: Thank you very much, Mr. McLeod, and may I assure you on behalf of the commission that we appreciate your appearing before us as a member of the public because in addition to the various leaders of state government, we wish also to have the views of our citizens such as yourself. Thank you very much for having come. Now, Counsel, are there any further witnesses?

MR. YAUCH: No, that's all. Commissioner Howell was here before and I told him that I didn't think that we would have time enough to put him on today but I'll get in touch with him so that he can be present at the next hearing.

SENATOR MURRAY: Counsel, it is my understanding that in time for our next hearing you will have invited the various

other categories of witnesses which the Commission outlined one week ago - the deans of the law schools, as I recall, and the Law Enforcement Council, and anyone else who may be on that list that you possess.

MR. YAUCH: That's right. I will attend to that.

SENATOR MURRAY: If there is no further business, gentlemen of the Commission, may I entertain a motion to adjourn.

MR. MARCIANTE: I so move.

SENATOR MURRAY: The hearing is adjourned.

(A D J O U R N E D)