Ethics and Redevelopment in New Jersey

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Take the Noble Path

In every government on earth there is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate, and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories.

-Thomas Jefferson
Third President of the United States
First, the good news: Four ethics bills signed September 4, 2007

- **S-1192** Makes it illegal for elected officials to misuse public resources for private gain
- **S-1318** Increases penalties for public corruption convictions
- **S-1662** Requires Internet postings of voting records of each lawmaker for two terms
- **A-4326** Bans holding dual office (but allows current legislators to keep local offices)

*The Star-Ledger (Sept. 5, 2007)*
“Public Resource” means any funds or property provided by the government, or person acting on behalf of the government, including:

- Money or equivalent paid by gov’t directly or indirectly to or on behalf of person or employer
- Transfer of assets for less than fair market price
- Fees, costs, rents, insurance/bond premiums, loans required in contracts but are reduced or waived or forgiven by gov’t
- Money loaned by gov’t and repaid on contingent basis
- Money loaned by an entity based on gov’t guarantee
- Grants awarded by gov’t or entity acting on its behalf
- Credits applied against repayment obligations
Public Corruption Profiteering Penalty Act
Ellen Karcher (D-Monmouth), Fred Madden (D-Gloucester)

- May be imposed when a person convicted of a crime or attempt or conspiracy to commit a crime involving the negotiation, award, performance or payment of a local, county or state contract. (subsection 1. c)

- Where the Attorney General or county prosecutor has established by a preponderance of evidence that defendant was convicted of these crimes:
  1. $500,000 for crime of 1st degree
  2. $250,000 for crime of 2nd degree
  3. $75,000 for crime of 3rd degree
  4. 3 times the value of any property involved in crimes in subsection 1. c.
P.L. 2007, Chapter 160 [Bill S-1662]
Concerning Legislative Information Available to Members of the Public and amending P.L. 1995, c.319
Sponsors: Robert Martin (R-Morris), Loretta Weinberg (D-Bergen)

The Office of Legislative Services shall make available to the public and maintain in electronic form the following information:

- Current official text of all statutes
- Text of all bills in current 2-year session, amended versions, sponsor statements, etc.
- All bills pending in the Legislature
- Bill-tracking data, including a complete voting record by Legislators
- Current calendar or events, committee meetings, and bills scheduled for legislative action
P.L. 2007, Chapter 161 [Bill A-4326]
Concerning persons holding more than one elective public office simultaneously
Sponsors: Michael Panter (D-Monmouth), Linda Greenstein (D-Middlesex)

This act shall take effect on February 1, 2008.

- This bill prohibits the holding simultaneously of more than one elective public office in this State.
- The prohibition will not apply to an elected official who simultaneously holds more than one elective public office on the bill’s effective date, as long as service in those particular offices is continuous following that effective date.
Now the bad:
There is a culture of corruption.
Operation Cornered Lot: Newark feels the sting

- Indictment alleges Sharpe James misused positions as Mayor of Newark and State Senator to improperly favor Tamika Riley to obtain more than $500,000 in money and property for her by steering sales of city owned property at steeply discounted prices through her company TRI.
- Riley “flipped” properties for lucrative profits without redeveloping them as required by her contracts with Newark.
- In 2004, James introduced and shepherded to passage a state law expanding his powers over land sales in Newark.
OPINION:
The Star-Ledger, Aug. 29, 2007

- October 30, 2002 - Asbury Park Councilman James Condos and Long Branch Developer Philip Konvitz indicted
- Konvitz provided Condos with $35,000 in ongoing financial support and cash in exchange for Condos’ votes on city council regarding hiring and firing of city attorneys and city manager, as well as oceanfront redevelopment.
- Konvitz facilitated $50,000 bribe to Terrance Weldon.
Asbury Park: A Tangled Web
Pay-to-play, redevelopment & eminent domain

“Government’s powers in areas designated for redevelopment are nearly unfettered and include the power of eminent domain. It is important that redevelopment decisions are made in the broad public interest and not as a reward to large campaign contributors.”

-Harry Pozycki
The Center for Civic Responsibility
Political Action Committees and Pay-to-play

Pay to Play diagram at gloucestercitynews.typepad.com/.../09/index.html
Pay-to-play’s ‘poster child’?
Politicians, law firms have reaped $13M from EnCap

EnCap, the developer behind a controversial plan to transform the Meadowlands into a luxury golf course complex, has been speculated to be a pay-to-play ‘poster child’.

By JOHN BURHANER and DAVE SHEHOLD

Some of the attorneys who have been hired by EnCap’s political contributors were paid by the company to represent the company in legal matters.

The company has also been accused of funneling money to political campaigns in violation of state law.

EnCap’s plan to develop the Meadowlands is estimated to cost $13 million in public funds, with potential profits of up to $100 million.

The company has been criticized for its practices, including the use of political contributors to influence the outcome of legal proceedings.

The Meadowlands is an economic asset, according to EnCap.

EnCap’s attorneys have been paid more than $1 million for their services, while the company has contributed more than $100,000 to political campaigns.

The company’s tactics have been the subject of investigations by state attorneys general.

Source: New Jersey Election Commission, Open政府.org
Answer to the EnCap trivia question

Margulies cartoon: http://stopencapnow.com/
New Jersey Local Unit Pay-to-Play Law

- **N.J.S.A. 19:44A-20.4 et seq.** took effect on Jan. 1, 2006
- Affects how municipalities, counties, local authorities, fire districts and all subsidiaries, boards, commissions and agencies award contracts in excess of $17,500 for goods and services
- A municipal or county government agency cannot award a contract without using a fair and open process if the contractor...
  - ...is a contributor to a candidate committee or political party committee where a member of the party is serving in an elective public office of that municipality, county, and either...
  - ...Made “reportable” contributions (those in excess of $300) during the year prior to the award, and/or...
  - ...makes contributions during the life of the contract.
State Ethics Commission
Paula Franzese and Daniel J. O’Hern

• Uniform Ethics Code governs conduct of State officers, employees in State agencies in the Executive branch of State Government.

• “Interest” means
  – Ownership or control of more than 10% of the profits or assets of a firm, association or partnership or more than 10% of stock in a corporation (other than a professional service corporation)
  – Ownership or control of more than 1% of stock in any corporation which is holder or applicant for, or a casino license or in any holding corporation or intermediary company with respect thereto as defined by the Casino Control Act. Provisions applicable to shareholders, associates, or professional employees of professional service corporation regardless of the extent or amount of their shareholder interest.
Conflicts: In re Christine Bator, Commissioner Board of Public Utilities (July 23, 2007)

- Court determined there was a disqualifying conflict of interest
- SEC adopted regulation requiring state officials to recuse themselves if they have direct or indirect financial or personal interest that is incompatible with discharge of official’s public duties.
Conflicts of Interest:
*In Re ACPE Opinion 705 (A-74-2006)*

- RPC 1.11 prohibits former government attorney from representing private client in matters which the lawyer recently participated. Conflict is not imputed to law firm if disqualified lawyer is screened, does not share in fees, and written notice is given to gov’t agency. Attorney John Van Dalen notified Div. L.& P.S. that former DEP-DAG Stephen Brower was screened from Harbor Cove matter.

- DEP said Van Dalen Brower firm must comply with New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-17: No former State employee may represent “…through any partnership, firm, or corporation in which he [or she] has an interest” any client other than the State in connection with a matter that the employee was “substantially and directly involved” with as a State employee.

- ACPE 705 opined that RPC “should prevail.”

- N.J. Supreme Court (July 19, 2007) decides that attorneys formerly employed by State must comply with both the Act and the RPCs.
Conflict of interest or error in judgment?

Judge clears attorney of ethics lapse

Inquiry concludes lawyer made an error in judgment

BY KEVIN C. DILWORTH
STAR-LEDGER STAFF

An ethics investigation into West Orange Township Attorney Richard Trenk found that he did not break any laws when he failed to disclose his interest in a group seeking to purchase property next to the site of a shuttered pharmaceutical plant that was being targeted for redevelopment.

"Prudence, caution and sound judgment also should be guides to the conduct of public officials," Stein wrote. "I am persuaded that Mr. Trenk committed an error of judgment in deciding to become a member of the purchasing group. I suspect that with the benefit of hindsight, he would have made a different decision."

The report, released yesterday, focused on Trenk's involvement with a group that last year sought to acquire an office building on the sprawling Organon industrial, manufacturing and pharmaceutical office facility.

As head of the town's legal department, Trenk oversaw negotiations with Organon over the redevelopment zone, as well as a tax appeal that resulted in West Orange gaining an option to buy part of Organon's former Mount Pleasant Avenue property.

"I am pleased the matter is concluded, and look forward to continuing to vigorously represent the township," Trenk said in a written statement.

Trenk's attorney, Michael D. Sirota, said the report vindicates his client.

"The township asked Justice Stein to determine whether the township attorney violated any law or rule of professional responsibility in his service to the township," Sirota said.

"Based upon an extensive investigation and thorough analysis of the operative rules and law, Justice Stein concluded that no violation occurred.

The report notes the probe included 16 personal and telephone interviews with township officials, various attorneys, investors and developers, as well as an examination [See LAWYER, Page 34]
Local Government Ethics Law

Provisions requiring compliance by local government officers, employees, N.J.S.A. 40A:9-22.5 (a, b)

a. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

b. No independent local authority shall, for a period of one year next subsequent to the termination of office of a member of that authority:

(1) award any contract which is not publicly bid to a former member of that authority;
(2) allow a former member of that authority to represent, appear for or negotiate on behalf of any other party before that authority; or
(3) employ for compensation, except pursuant to open competitive examination in accordance with Title 11A of the New Jersey Statutes and the rules and regulations promulgated pursuant thereto, any former member of that authority. The restrictions contained in this subsection shall also apply to any business organization in which the former authority member holds an interest.
Local Government Ethics Law, continued

Provisions requiring compliance by local government officers, employees, N.J.S.A. 40A:9-22.5 (c,d,e)

c. No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;

d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

e. No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;
Local Government Ethics Law, continued

Provisions requiring compliance by local government officers, employees, N.J.S.A. 40A:9-22.5 (f, g,)

f. No local government officer or employee, member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties;

g. No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;
Local Government Ethics Law, continued

Provisions requiring compliance by local government officers, employees, N.J.S.A. 40A:9-22.5 (h, i)

h. No local government officer or employee or business organization in which he has an interest shall represent any person or party other than the local government in connection with any cause, proceeding, application or other matter pending before any agency in the local government in which he serves. This provision shall not be deemed to prohibit one local government employee from representing another local government employee where the local government agency is the employer and the representation is within the context of official labor union or similar representational responsibilities;

i. No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group;
Local Government Ethics Law, continued

Provisions requiring compliance by local government officers, employees, N.J.S.A. 40A:9-22.5 (j, k)

j. No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly, in return therefore; and

k. Nothing shall prohibit any local government officer or employee, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests. (L.1991,c.29,s.5.)
Joint Legislative Committee on Ethical Standards

- Standards of conduct for legislators and all State officers and employees in the executive and legislative branches are delineated in the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.).
- In addition, legislators and legislative officers and employees are subject to the provisions and procedural requirements of the Legislative Code of Ethics, which is adopted anew by the Legislature for each two-year session. The 1982-83 Code of Ethics has been temporarily adopted through the organizational resolution of the Houses. At present it has not been updated to comply with the more recent amendments to the Conflicts Law.
- Additionally Joint Rule 19 of the Houses allows inquiry into any conduct of a legislator or legislative employee which reflects upon the good name, integrity, and reputation of the Legislature or any member thereof.
- Lawyer-legislators and lawyer-legislative employees should also familiarize themselves with In the Matter of Advisory Committee on Professional Ethics Opinion 621, 128 N.J. 577 (1992), with regard to their ethical standards as lawyers and public officials.
Corzine must do more to stop contract corruption

BY HARRY POZYCKI

A couple of weeks ago, New Jerseyans were witness to what has become an all-too-familiar spectacle: the indictments of 11 public officials, including two state assemblymen, on political corruption charges. And as is the case more often than not, these officials were charged with taking bribes for influencing local government contracts.

This latest evidence of New Jersey’s entrenched and persistent culture of corruption hammers home the point that it is now long past time for Gov. Jon Corzine to stop dithering around the politically safe edges of the contract corruption problem and take real action.

New Jersey’s government contracting problems aren’t simply a matter of a few bad apples. At the heart of the matter is the fact that on the county and local levels, government contracts are still traded for political contributions — as opposed to selected on merit and cost-effectiveness.

County and local politicians have nearly unfettered power to select local and county professional service contractors such as attorneys, engineers and insurers and do so all too often as part of a political and contribution favor bank. This Wild West of local government contracting not only results in higher costs to taxpayers for lower-quality services but creates fertile soil for bribes and other illegal activity.

Corzine promised in his campaign to implement comprehensive pay-to-play reform that would sever the link between political contributions and lucrative government contracts. This reform would extend the contribution restrictions now in place for state contractors to counties, municipalities and school boards as well as close the remaining loopholes at the state level. To date, the governor has given this essential reform nothing more than occasional lip service.

Among a series of excuses for inaction is the fact that there is not an appetite for this measure among the Democratic majority in the Legislature. However, if Corzine decides to put the interests of New Jerseyans ahead of party politics, there is a pay-to-play reform majority of reform-minded Republican and Democratic legislators.

While Corzine inherited the culture of corruption, it is no longer enough to point to minor ethics reforms that do not move the needle. The test of leadership for any governor is how he tackles the big problems facing the state and if he is willing to use political capital and the bully pulpit to accomplish big goals. To pass the test of leadership in the fight against contract corruption, the governor needs to step up to the plate.

And the governor can send a strong message to legislators that he means business by issuing an executive order immediately to close the remaining loopholes in an otherwise strong state-level pay-to-play reform law. This order, called for by the Citizens’ Campaign, would include a ban on contributions by consultants involved in redevelopment as well as a ban on state contractor contributions to municipal political party committees and legislative leadership PACs. It would also extend regulations to partners and officers of firms doing business with state government.

Under the state constitution, the governor is charged to manage the operations of state government effectively and fairly. An executive order to ensure the integrity of state contracts is well within the governor’s authority.

Actions speak louder than words. It is time for Corzine to take executive action now.

Harry Pozyczki is chairman of the Citizens’ Campaign, an organization that devises reform solutions and promotes citizen leadership.
Call to action: One Ethics Code for All

- Merge Joint Legislative Committee on Ethical Standards with State Ethics Commission (SEC).
- Bring local government within the purview of SEC and Uniform Ethics Code.
- Mandatory ethics training at every level of government.
- Eliminate grandfather provision in dual office-holding ban.
- Ban pay-to-play at every level of government.
- Give teeth to OPRA and Open Public Meetings Act at all levels of government.

Paula Franzese, The Star-Ledger (September 27, 2007)
Do the Right Thing.

Always do right. This will gratify some people, and astonish the rest.

Mark Twain

New York, Feb. 16, 1901.

www.twainquotes.com