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# Ethics and Redevelopment in New Jersey

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> **"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***

September 2007 was a month of infamy for New Jersey. The headlines in the state's major newspapers featured the sentencing of former Ocean Township Mayor and Asbury Park Manager Terrence Weldon for accepting $64,000 in bribes from developers; the federal indictment of 11 municipal officials from Passaic, Paterson, Newark, Orange and Pleasantville on bribery charges in a sting operation; and the investigation by the Joint Legislative Committee on Ethical Standards in ethics charges against Senator Joseph Coniglio (D-Bergen) and Union City Mayor and Assemblyman Brian Stack. Finally, Governor Jon Corzine signed four ethics bills into law:

- S-1192 (sponsored by Ellen Karcher, D-Monmouth and John Adler, D-Camden), which identifies three tiers of criminal penalties applicable to offenders who accept bribes or misuse public funds;
- S-1318, the Public Corruption Profiteering Penalty Act (sponsored by Ellen Karcher and Fred Madden, D-Gloucester), which enables judges in corruption cases to impose monetary penalties on the offenders;
- S-1662, sponsored by Robert Martin, R-Morris and Loretta Weinberg, D-Bergen), which now required the Office of Legislative Services to post the individual voting records of lawmakers on its web site; and
- A-4326 (sponsored by Michael Panter, D-Monmouth and Linda Greenstein, D-Middlesex) that forbids dual office holding, but grandfathered the 19 legislators who currently hold additional posts as long as they are re-elected or until they retire. At the bill signing ceremony, as reported in *The Star-Ledger*, the governor said, "It's not the bill I wanted… It gets us down the road."[1]

The road to hell is paved with good intentions. Earlier in the year, Harry Pozycki, chairman of the Citizen's Campaign, gave the governor an "incomplete" in the area of pay-to-play reform, and in particular, for not taking on the culture of corruption. In an op-ed piece in the *Asbury Park Press*, Pozycki noted that the governor supported the ethics programs developed by Senate

President Richard Codey, which were palliative at best, and did not delve far enough into the root causes of corruption. Most importantly, Pozycki said that pay-to-play must be addressed in the context of redevelopment:

> 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.[2]

We know, and certainly municipal officials know, that it is illegal to take bribes in payment for municipal action. The issue gets murky, however, when we are dealing with political contributions which are legal, as opposed to bribes, which are not. Pay-to-play has been a fact of life in New Jersey for quite a long time, and this practice hasn't stopped. Neither is the prevailing attitude of many public officials referenced in the lead editorial in *The Star-Ledger* on August 29, 2007.

> The "go along to get along" mentality plays out in campaign donations from law firms, engineers and other professionals who then get juicy contracts for government work.
>
> It's why public officials help each other – be the gesture of an appointment to another pension-padding post or a disinclination to pursue ethics charges in the Legislature. They never know when they may need a return favor.
>
> Another variation of "go along to get along" involves officials who get caught snarfing up tax dollars at the public trough. They get indicted – most often by federal authorities – and then plead guilty in return for light sentences. A few months in a federal lockup, a few more in a halfway house and then back to New Jersey and its forgiving ways.[3]

The editorial reflects upon the actions of U.S. District Judge William Walls, who sentenced former Ocean Township mayor and city manager of Asbury Park, Terrence Weldon, to 58 months in prison, despite prosecutors who sought leniency in exchange for Weldon's cooperation. Judge Walls remained unimpressed with Weldon's efforts to assist the prosecution and FBI agents. Amazed at New Jersey politicians who are "hell bent on corruption," Walls said, "Then tell those people not to commit crimes. And tell those agents to work harder…This court is not going to slap people on the wrist to make your job easier."[4]

Five years elapsed from the time Weldon pleaded guilty to corruption charges until his sentencing due to more than a few postponements. In December, 2006, Monmouth County developer Moshe G. Gohar of Long Branch pleaded guilty for making $50,000 payment to Weldon to gain zoning approvals for a development project in Ocean Township. Gohar conspired with Phillip Konvitz of Neptune and Weldon to change the zoning so that Gohar could build the development with an increased number of houses. Gohar gave the cash to Weldon in 2001 to influence the former mayor to rezone and approve the development of Apple Farms.

Konvitz, a Long Branch developer, was indicted in 2002 for extortion, bribery, mail and wire fraud in Asbury Park with James Condos, a former councilman of Asbury Park. Konvitz allegedly provided Condos with ongoing financial support in exchange for Condos' votes on the city council for the hiring and firing of the city attorneys and manager, and Asbury Park's oceanfront redevelopment. Konvitz allegedly facilitated the payment of $50,000 to Terrence Weldon. Konvitz was declared incompetent to stand trial in 2003 and died in 2005. Condos pleaded guilty and was sentenced to 15 months in prison. Howard M. Schoor, a founding member of Schoor DePalma Engineers, was also indicted and accused of paying bribes to Weldon in order to gain favor and influence in securing contracts for his engineering firm.[5]

In March 2007, Frank G. Abate, executive director of the Western Monmouth Utilities Authority, was sentenced to 51 months in federal prison. Abate accepted free architectural drawing, valued at $4,800, from developers in exchange for exercising favor to those developers pending matters with the WMUA. As part of Operation Bid Rig, Long Branch and West Long Branch governing body members are scheduled to be sentenced this fall for accepting bribes while in office. Former West Long Branch Mayor Paul Zembrano, and his brother John Zembrano, who influenced the award of city demolition contracts as a former councilman in Long Branch, are scheduled to appear before U.S. District Court Judge William J. Martino for sentencing. John Zembrano pleaded guilty to one count of Hobbs Act extortion. [6] These are three more examples of the pervasive corruption among public officials in Monmouth County.

The indictment and guilty plea of former Senator John Lynch and his partner John Westlake, and the partial exposure of their activities on behalf of some of their clients is a striking example of how to game the system. Lynch and Westlake used two of their companies to perpetrate fraud. Both companies, Executive Continental and Alma Unlimited, ostensibly provided consulting services to developers, individuals and entities involved in New Jersey development projects.

Lynch's Political Action Committee collected large donations from developers, engineers, planners, and others who benefited from municipal contracts. Lynch would then judiciously spread this money around into the local municipal elections in order to insure a favored mayor was elected or a recalcitrant council member was defeated.

Local mayors running for office have been quoted in the media frequently, saying that they did not take money from any developers. The developers didn't donate directly to the mayor's campaign: they gave the money to Lynch's PAC which donated the money to the various mayoral campaigns. Even those donations do not turn up until after elections because they are often timed to be made just prior to the election when reports about eleventh-hour donations are

not readily available until weeks after the election has occurred. All of this practice could be called "legal," but it is certainly isn't moral.

When the topic of ethical reform comes up in a public forum, all politicians, without exception, will say that they are in favor of restoring the public trust in government. But the indictments of September are only the latest examples of a malaise that has afflicted New Jersey for years. The State Ethics Commission was created in 1973 to administer and enforce the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., and was renamed the State Ethics Commission, effective March 15, 2006.[7] Holding public office is a public trust, and good government requires that public officials know and understand the applicable ethical rules regarding their conduct. Public officials should be subject to routine audits of their financial affairs, and official conduct must be subject to transparency and accountability. Three major features recognized in most jurisdictions addressing these issues are regulation of executive lobbying, rules of conduct for government officials, and campaign practices and finance.[8]

Recommendations for ethics reform have included the adoption of a uniform code of ethics binding on local governments, the elimination of dual office holding, and strengthening pay-to-play reforms. Adoption of a municipal code of ethics applicable to all municipalities is paramount. Most of the problems we see in the media involve mayors, council members, and other municipal officials accepting illegal payments. New Jersey presents a unique problem because it is one of the smallest states with one of the densest populations. Local governmental supervision is a daunting task with 567 municipalities, 611 school districts, 190 local authorities, and 121 fire districts. The State Ethics Commission should be authorized to create a uniform code of ethics to which all local government is bound.

Pay-to-play is critical problem. It is the political practice of rewarding campaign contributors with no bid government contracts. It has been described as a "hidden tax." Fifty-two municipalities and one county in New Jersey have adopted versions of a model ordinance drafted by the Center for Civic Responsibility. On September 13, 2007, Evesham became the first municipality in Burlington County to adopt an amended pay-to-play ordinance that will place stricter limits on campaign contributions from those seeking to do business with the municipality.[9]

When contracts are awarded without bidding, the contributors can inflate their bills, recoup their contribution, and give more to the hand that feeds them. For example, in redevelopment projects, the developer is selected by the municipality, often without RFQ or RFP. Once selected, the developer enjoys the benefits of the municipal power of eminent domain to acquire the property designated for redevelopment and tax abatement for the development.

> It all comes down to a package deal of sorts with lawyers providing the legal services to pull together development plans by builders and municipalities and keeping the projects and players on track.

> Essentially, law firms assist municipalities in implementing a state law that allows communities to declare sites as needing redevelopment and then to buy and rebuild those properties in partnership with private developers who, in turn, qualify for tax deferments and other financial incentives.
>
> The legal services range from advising the municipalities in determining if the selected parcels are covered by the law, developing a redevelopment plan that supersedes existing planning law, arranging project financing and contracts with developers and, if needed litigation services.[10]

Theoretically, this description of legal services for the municipality and the redeveloper sounds ideal. The reality is somewhat different, as described in "EnCap's end run," an editorial in *The Record*:

> When the developer EnCap and its lawyers gave thousands of dollars to local elected officials who decided on its project, who was the biggest loser?
> a) EnCap, which spent the money
> b) The elected officials, who received the money
> c) Taxpayers.
>
> …This state's redevelopment laws give extraordinary power to local officials. Mayors and councils can declare perfectly decent homes and businesses "blighted" and in need of redevelopment. They can take private properties for redevelopment. They can bypass ordinary zoning laws in redevelopment areas. Opponents of these actions must mount lengthy and costly legal challenges – something many private individuals cannot afford.
>
> Where there is great power, there is great opportunity for corruption. [11]

EnCap, a developer located in North Carolina, and its corporate affiliates spent more than $13.1 million on political contributions, lobbying and legal fees while the company gained backing for New Jersey projects, including a plan to build a golf community in the Meadowlands. The developer received tax grants, public financing, and backing from state officials. But the pay-to-play reforms enacted in 2004 applied only to state government contracts.[12]

Two days after the EnCap story broke, on April 11, 2007, then Attorney General Stuart Rabner announced a merit-based selection process for law firms. RFQs are now required. The criteria

include expertise, location, size, past performance, and absence of conflict of interest. Law firms are used to the RFP process required by in-house legal counsel in private corporations.[13] In the future, there will be separate RFQs for other practice group areas including real estate.[14]

However, the selection of developers is fraught with controversy at the municipal level. For example, an RFQ process was challenged in a law suit brought against West Orange in July, 2006. The lawsuit was brought by a developer who alleged that the RFQ process was flawed because, in establishing the criteria for evaluating the redevelopment proposals, West Orange negotiated with a competing developer in closed sessions in an alleged arbitrary and capricious manner. The suit claimed that West Orange had agreed to transfer an additional piece of property, the Organon site, to the designated developer, Prism Green, at a price well below market value. The plaintiff's RFQ only covered the downtown redevelopment area because they were unaware that the Organon site was part of the redevelopment process. The selected developer, Prism Green, on the other hand, had prior knowledge because their submission included both downtown redevelopment area and the Organon site.[15] The selection of Prism Green, accomplished in a closed section, effectively denied a competing developer the opportunity to submit a revised proposal covering both sites. The manner in which the developer was selected gives to rise to questions about impermissible favoritism as stated in Justice Kennedy's concurring opinion in Kelo v. City of New London, 545 U.S. 469 (2005):

> A court confronted with a plausible accusation of impermissible favoritism to private parties should treat the objection as a serious one and review the record to see if it has merit, though with the presumption that the government's actions were reasonable and intended to serve a public purpose.[16]

The efforts to develop the Organon site were further tainted by alleged conflicts of interests with the township attorney, Richard Trenk. West Orange then spent $50,000 to have retired Supreme Court Justice Gary Stein issue a report which eventually exonerated municipal attorney Richard Trenk for the alleged conflicts of interest. Justice Stein characterized Trenk's action as "an error of judgment."[17] However, Trenk, as municipal attorney, was overseeing the town's redevelopment plans, which at one time included the Organon site. Simultaneous with his representation of the town, Trenk, with an unnamed group of investors, contracted with Organon to buy one of its buildings. At the same time, the municipality approved settlements of pending tax appeals with Organon. Justice Stein, in his report, never identified Trenk's co-investors and accepted Trenk's representation that the identities of the co-investors were confidential. Without knowing the names of the people in the investment group, the Justice was in no position to opine that the municipal attorney's actions were merely an error of judgment. Without full disclosure, the investors have remained anonymous, hidden behind the veils of a Limited Liability Corporation which only identifies the incorporator and gives no further information about the members of the corporation. Herein lies the essence of the conflict. Without this question being answered, how can the public have any faith in the process?

In the recent Appellate Division decision In re Christine v. Bator, Commissioner Board of Public Utilities decided July 23, 2007, the Court upheld a finding of a conflict of interest regarding a BPU commissioner and her sister, the Chief of the Bureau of Rates and Tariffs. The State Ethics Commission (SEC) found that it was incumbent upon Commissioner Bator to recuse herself from cases where her sister or her sister's staff was reporting to the BPU on matters on the BPU's agenda. The SEC found that there was an appearance of conflict of interest in this relationship. The Appellate Division affirmed, noting that court's role in reviewing agency actions will normally defer to the agency's expertise and superior knowledge of a particular field. Thus the court deferred to the SEC finding that there was an appearance of impropriety and a violation of the New Jersey Conflicts of Interest Law. N.J.S.A 52: 13D-12 to -28.

In Bator, the court relied in part on a Supreme Court decision in Thompson v. City of Atlantic, 190 N.J. 359 (2007), which reviewed the question of impropriety of municipal officials who took part in the settlement of litigation against the city in which they were the adverse parties. The court identified key public policies: conflict of interest laws ensure that public officials provide disinterested service to their constituents, refraining from "self-dealing," and promote confidence in the integrity of governmental operations. The court emphasized the following:

> [t]he citizens of every municipality have a vested right to the disinterested service of their elected and appointed officials, whose undivided loyalty must be to serve the public good. Public confidence requires that municipal officials avoid conflicting interests that convey the perception that a personal rather than the public interest might affect decision-making on matters of concern. Officials must be free of even the potential for entangling interests that will erode public trust in government actions. Thus, it is the potential for conflict, rather than proof of an actual conflict or of actual dishonesty, that commands a public official to disqualify himself from acting on a matter of public interest.[18]

Similarly, in Haggerty v. Redbank Borough Zoning Board of Adjustment, 385 N.J. Super. 501, 517 (App Div. 2006), the court reversed the decision of the Board of Adjustment and the trial court because the Board's vice-chairperson had a disqualifying conflict of interest. The conflict concerned the vice-chairperson of the Board whose father was counsel to a law firm that previously represented the applicant in the matter before the Board. The matter was an action in lieu of prerogative writs. The trial judge denied plaintiffs' motion to expand the record and permit discovery on alleged conflicts of interest, finding that the motion was filed out of time. The Appellate court rejected the trial court's conclusion that the conflict was "remote and speculative."

Another significant case was decided by the New Jersey Supreme Court on July 19, 2007. That case, In Re ACPE Opinion 705 (A-74-2006), concerned a conflict between the New Jersey

Conflicts of Interest Law N.J.S.A. 52:13D-12 to -27 and the Rules of Professional Conduct, RPC 1:11 (c). The conflict of interest law imposes more restrictions than the corresponding RPC with regard to a lawyer representing a client where another member of his firm was involved in the same matter while serving as a government employee. The New Jersey Conflicts of Interest Law N.J.S.A. 52:13D-17 expressly prohibits the law firm from representing the client when another member of the firm is conflicted due to his previous involvement in the same matter as a government employee. RPC 1.11 (c) would permit such representation through the use of screening and notification:

> "…the question presented is whether attorneys formerly employed by the State are subject to N.J.S.A. 52:13D-17 when the Act's post-employment restrictions are more stringent than the directives of RPC 1.11 (c)

In a 6-1 decision, the court held that the conflict of interest law serves a legitimate governmental purpose and does not improperly encroach on judicial interests. The court deferred to the Legislature in the spirit of comity and held that the attorneys must comply with both the conflict of interest law and the RPCs. Thus, where the conflict of interest law is more restrictive, the attorneys involved must comply with the conflicts of interests law and recuse themselves.

The municipalities are governed by the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., which was passed in 1991. The law is enforced either by a local ethics board or the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs. Franzese and O'Hern called the law "well intended, but toothless."

> For example, the Local Government Ethics Law contains:
> • No clear ban on gifts. It contains merely a generic ban on gifts intended to influence the office holder. [19]
> • No explicit ban on nepotism. It speaks generally of not acting in a manner that might impair the official's "objectivity or independence of judgment."
> • Insufficient disclosure requirements for business interests. It contains only the basic requirement for disclosure of income.
> • No significant penalties for transgressions.
> • No direct power to cause removal from office. The Local Finance Board may only refer matters to the appointing authority.

To cure the disparity between state, legislative, and municipal ethics compliance, Franzese and O'Hern recommended that the Uniform Code of Ethics become binding on local government, and that the State Ethics Commission with the Office of the Inspector General and the Attorney General's Office of Public Integrity facilitate and monitor ethics training and audits at the county and municipal level.

A year ago, Franzese and O'Hern wrote an op-ed piece in *The Star-Ledger* in which they criticized the Joint Legislative Committee on Ethical Standards as unable to police the misconduct of its members.[20] Franzese and O'Hern have a solution: let the SEC have jurisdiction over the Legislature. More than 16 states have ethics commissions with jurisdiction over both the executive and legislative branches, including Pennsylvania, Illinois, Connecticut, California and Texas.

On June 11, 2007, an editorial in *The Star-Ledger* called for one ethics standard for all levels of government. The Legislature's Joint Committee on Ethical Standards has a proven record of absolving just about every politician. While membership on the committee has changed over the years, the "ethical watchdogs, it's clear, have a hard time sniffing out anything even faintly malodorous."[21] A month later, former mayor of Newark and current state Senator Sharpe James was indicted for lavish spending and travel expenses with his City of Newark credit cards and engaging in fraudulent land "flipping." The indictment charges that James helped his companion, Tamika Riley, acquire properties under a program designed to enable developers to buy blighted city-owned properties at less than market rates on the condition that they rehabilitate them. Riley acquired the properties and sold them for much higher prices without the required rehabilitation. In the ultimate irony, the indictment quotes statements made by Senator James in support of his own legislation before the state Senate's Community and Urban Affairs Committee on March 1, 2004:

> "What we have is that [City] Council people are giving themselves municipal land so that at the end of their term of office they will have acquired the wealth based on the acquisition of municipal property which is contrary to law and very wrong…This law is needed to ensure that we protect the public trust. That we do not allow thievery with municipal property…"

We need to place the practice of ethics above the law, whether we are judges, attorneys, legislators, mayors, municipal planning board members, or state employees. New Jersey's citizens deserve public servants and officers of the law who do the right thing. And if we always do right, as Mark Twain said, "This will gratify some of the people, and astonish the rest."

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[1] Deborah Howlett, "Corzine gives reluctant approval to stripped-down ethics bills." The Star-Ledger (September 5, 2007): 19.

[2] Harry Pozycki, "Governor has failed to tackle state's culture of corruption." Asbury Park Press (Jan. 18, 2007).

[3] "The judge draws a line." The Star-Ledger (Opinion, August 29, 2007): 14

[4] Jeff Whelan, "Ex-mayor gets harsh term in graft case: Despite cooperation, calls for a reduced sentence are ignored." The Star-Ledger (New Jersey, August 28, 2007): ll, 16.

[5] "Indictment alleges bribes paid by firm's founder." Examiner, (December 20, 2006): 1

[6] Christine Varno, "Sentencing for Zembranos in the fall." The Atlanticville, (August 2, 2007):1

[7] State of New Jersey, State Ethics Commission Web site at http://www.state.nj.us/ethics/about . The Commission has the power to undertake investigations and hold hearings regarding alleged violations of the Conflicts Law. The Commission also issues advisory opinions concerning whether a given set of facts and circumstances would in the Commission's opinion constitute possible violations of the Conflicts Law or any code, rules or regulations promulgated pursuant thereto.

[8] Paula Franzese and Daniel J.O'Hern, Sr., "Restoring the Public Trust: An Agenda for Ethics Reform of State Government and A Proposed Model for New Jersey." Rutgers Law Review (Volume 57, No. 4, Summer 2005): 1177-1179.

[9] Danielle Camilli**,** "Evesham tightens pay-to-play rules." Burlington County Times (Sept. 13, 2007). A full list of the municipalities that have passed pay-to-play ordinances can be found at the Center for Citizen Responsibility web site at http://www.jointhecampaign.com/pages/?pg=prevent_ptp

[10] John M Covaleski, "Real Estate Law: There's gold in them there redevelopments." New Jersey Lawyer (Vol. 14, No. 13: March 2005).

[11] "EnCap's end run." The Record (Editorial, April 10, 2007). The answer to The Record's trivia question is "the taxpayers."

[12] "Pay of play's 'poster child?': Politicians, law firms have reaped $13M from EnCap." The Record (April 9, 2007)

[13] Lisa Brennan, "Revving up the RFQs." New Jersey Law Journal (May 4, 2007).

[14] See "Request for Qualifications" at http://www.nj.gov/oag/newsreleases07/outside-counsel-rfq-4.03.07.pdf

[15] Jonathan Casiano, "West Orange sued over downtown plan." The Star Ledger (Essex County, July 12, 2006).

[16] Kelo v. City of New London, 545 U.S. 469 (2005) Justice Kennedy concurring at 2, 3. Here, the trial court conducted a careful and extensive inquiry into .whether, in fact, the development plan is of primary benefit to . . . the developer [*i.e.*, Corcoran Jennison], and private businesses which may eventually locate in the plan area [*e.g.*, Pfizer], and in that regard, only of incidental benefit to the city.. 2 App. To Pet. for Cert. 261. The trial court considered testimony from government officials and corporate officers; *id*., at 266.271; documentary evidence of communications between these parties, *ibid*.; respondents. awareness of New London's depressed economic condition and evidence corroborating the validity of this concern, *id*., at 272.273, 278.279; the substantial commitment of public funds by the State to the development project before most of the private beneficiaries were known, *id*., at 276; evidence that respondents reviewed a variety of development plans and chose a private developer from a group of applicants rather than picking out a particular transferee before hand, *id*., at 273, 278; and the fact that the other private beneficiaries of the project are still unknown because the office space proposed to be built has not yet been rented, *id*., at 278.

[17] Kevin C. Dilworth, "Judge clears attorney of ethics lapse: Inquiry concludes lawyer made an error in judgment." The Star Ledger (Essex County, January 25, 2007): 33-34.

[18] Thompson v. City of Atlantic, 190 N.J. 359 (2007) 374-375. (emphasis added).

[19] Franzese and O'Hern: 1220. The full text of the ban on gifts contained in the Local Ethics Law is as follows: 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.

[20] Franzese and O'Hern, "Policing the Legislature," The Star-Ledger, (Opinion, October 29, 2006.)

[21] "One ethics standard for all." The Star-Ledger, (Opinion, June 11, 2007): 14