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H. J. - Legislative Research
Jan 22 1959

MEMORANDUM

TO: ~~Hon. J. B. Connelley, Jr., Speaker, House of Representatives~~

FROM: (Mrs.) Herta Prager, Legislative Research Librarian

DATE: January 22, 1959

SUBJECT: Legislative history of laws referring to residence requirements of public officers.

RS11:22-7
RS40:11-1
RS40:46-14
RS11:23-5
RS40:47-5
KS11:21-4
BS52:14-7
BS40:48-1 and 2
RS11:24-1

We are enclosing the histories of the above sections together with copies of the following bills:

1876 Senate 10

1911 Senate 123 Assembly Amendments to S 123.

1924 Assembly 172 Committee Substitute for A 172.

1935 Assembly 21 Senate Amendments to A 21.

In each case we started out with the present law and worked back through all amendments. In most cases there was very little explanatory material. Some conclusions can be drawn from amendments of the bills during passage.

We hope this material serves your needs. If we can be of any further help, please let us know.

1937 R.S. 11:21-4 - Appointments, reductions and dismissals made in accordance with subtitle.

The 1937 Revision made this section applicable to "any county, municipality and school district" while before it applied to "the civil service of this State" and to "any municipality of this state" which had adopted the civil service law.

No comment in the 1934 Report of the Revision Committee.

1908 The law was enacted originally as L. 1908, Ch. 156, Section 1, S. 311, Senator Ackerman.

Senate Bill was a compromise bill for Senate 6, the bill originally introduced. This section was taken unchanged from Senate 6. Neither bill had a statement.

1937 R.S. 11:22-7 - Applicants limited to residents of county, municipality and school districts.

Revision of 1937 added to the section the words "school district" followed by the word "judicial" in all three occurrences and changed the wording of "those entering the examination or seeking appointment" to "applicants".

These changes appear in the earliest available Report of the Commission on Revision and Consolidation of Public Statutes, 1934, without comment.

1930 Earlier the Section was amended by L. 1930, Ch. 56, § 42, Senator Chandless. This bill had the following

Statement

The purpose of this act is to limit the eligibility of Civil Service appointees to the particular district which pays the salaries. The present law provides this as to counties and municipalities but does not limit it as to districts.

It was amended in the Senate to add "judicial" in the sentence "where the service is to be rendered in a particular county or municipality or any judicial district".

1924 The law was originally enacted by L. 1924, Ch. 134, A 172, Assemblyman Camby. A 172 with statement is enclosed, also Assembly Committee Substitute 172 with statement. Notice that in the ACS the phrase "the Civil Service Commission may limit" was changed to "the Civil Service Commission shall limit".

1937 R.S. 11:23-5 - Examinations free; non-residents admitted.

The wording of this section was slightly changed in the revision, without, however, changing the contents. There was no comment in the Committee report.

1911 Before 1937, the law was amended by L. 1911, Ch. 148, § 123, Mr. Ackerman. The amendment provided for positions requiring special training.

The bill and amendment are enclosed. There are no statements.

1908 The original bill was L. 1908, Ch. 156, Section 18, Senate Bill by Mr. Ackerman.

Report see H.R. 76

The bill was introduced without statement; however, it appears from the Senate Journal page 565 that this bill was a compromise bill introduced by the majority of the committee appointed to study the "Civil Service Bill" § 6 of the same year.

Comparing sections 18 of the two bills, we find that the original bill had the following phrase which was left out in the compromise bill. After the words "...health, habits and moral character;" it continued:

Provided, however, that the commission may admit to any examination persons who are not citizens of the State if in its judgment a sufficient number of qualified applicants who are citizens of the State cannot be secured.

1937 R.S. 11:24-1^V - Preparation and suggestion by commission for counties, municipalities and school-districts generally; information furnished.

The 1937 revision changes the wording slightly, makes the section applicable to "school districts" in addition to counties and municipalities. It left out part of the provisions of the 1918 Statute requiring detailed specifications.

There is no comment in the 1934 Report.

1918 The section was amended earlier in L. 1918, Chapter 54 Assembly 16, Mr. Morgan.

The bill passed the legislature unamended. It had the following

Statement

This bill provides for a properly classified standardization plan for civil service officers and employees.

1908 The original Civil Service Bill, L. 1908, Chapter 156, did not provide for classification standards.

1953 RS 40:11-1 Laws 1953, Ch. 37 Residence of county and municipal officers; office not transferable; penalty; ouster. Senate 34, Clapp.

This is one of the bills introduced to make the title conform to the Revision of Title 2A. There is no statement. The fourth paragraph provides for the new type proceeding.

1937 RS 40:11-1 The 1937 Revision changes the prior wording without changing the contents except for the last sentence of the prior law which is omitted in the 1957 version: "and provided further, that nothing herein contained shall require any town or township attorney or counsel to reside within such town or township." No comments in the 1934 Report of the Revision.

1876 L. 1876, Ch. 83, Senate 10

Senate 10 was introduced without a statement. We know from the journal that it was amended at least once in the Senate. The amendments added on line 21 after "duties of such office" the words "in cases where scientific engineering skill is necessary to the performance of the duties thereof;" and on line 26 omitted the wording from "person or persons desiring to sue or prosecute the same," and added the whole paragraph starting with "any officer of the state, if the offending officer, etc."

We are enclosing Senate 10 for your information.

1846 The 1876 law was based on an act passed in connection with the General Revision of 1846. (Sen. 42). Revised Statutes 1846, Ch. 21. There are no comments on the Revision, it passed unamended.

1778 However, the gist of the statute was taken out of an earlier law passed on Oct. 8, 1778 and which appears in Revision of 1820, Pennington, page 52.

1949 R.S. 40:46-14 ✓ Vacancies; how caused; filling. L. 1949,
Ch. 62 S. 180

The bill added health officers to the offices who need not be residents. There was no explanatory statement.

1937 R.S. 40:46-14 was taken practically unchanged from the earlier law. The slight modifications are only in style.

1920 Laws 1920, Ch. 115, A263. This bill added municipal engineers to the officers who need not be residents.

STATEMENT

This act is introduced in order that the office of engineer of a municipality may not be deemed vacant on account of nonresidence of such engineer. This may have been the original intention of the framers of the act, but as it is printed such intention is questionable.

1917 Laws 1917, Ch. 152, Art. 37, Sec. 18, A592

This is the original enactment. It is part of a general Act Concerning Municipalities. The bill was amended during passage but section 18 was not changed. There is no statement.

The report of the Commission which worked on this revision of the Municipal Law does not shed any light on this Section.

* 974.90

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1917

1937 RS 40:47-5 Term.

The revision of 1937 combines two prior sections, one having to do with police and the other with fire departments. There are no other substantial changes.

1935 Laws 1935, Ch. 244, Assembly 21

This bill made the section applicable to "paid members" of "part-paid fire departments". It has a statement and was amended in Assembly. Original bill and amendment are enclosed.

1917 Laws 1917, Ch. 152, Art. 16, Sec. 3, A 592

These are the original enactments. They are part of a General Act Concerning Municipalities. The bill was amended during passage but the sections were not changed.

There is no statement.

The report of the Commission which worked on the revision of the Municipal law does not shed any light on the sections.

1937 RS40:48-1 Ordinances; general purpose - - - -

Officers and employees; duties, terms and salaries.

Revised statutes of 1937 re-enacts the prior law, except for minor changes.

1917 L. 1917, Ch. 152, Art. 14, Sect. 1, A 592

This is the original enactment, part of a General Act concerning municipalities. The amendment during passage did not affect the section and the report of the Committee did not refer to it.

The purpose of the committee's work was stated in the preamble as follows:

"Whereas, It is desired that the largest possible measure of home rule, consistent with constitutional limitations, should be granted to the municipalities of the State, so that each of them, in response to the sentiment and desire of its people, may from time to time deal with every matter of local concern, including the ownership and operation of such public utilities as any municipalities may see fit to own or operate; and

"Whereas, The revision and complication of the present laws relating to cities and other municipalities, and the delegation of more power to cities and other municipalities without sweeping away those fundamental principles and policies generally accepted and recognized throughout this State as wise and beneficent, would remove much of the present confusion and uncertainty and would shorten the sessions of the Legislature."

Report of the Commission to Revise and Codify the Statutes of this State, page 8.

1937 RS 40:48-2 Other necessary and proper ordinances was derived from L. 1917, Ch. 152, Art. 14, Sect. 2 and the same information applies as for RS40:48-1 above.

1953 RS 52:14-7, L. 1953, Ch. 49, p. 3, Senate 45, Clapp.

State officers must reside in state; transfer, etc. of office; penalty; engineering skill; ouster from office.

This is one of the bills introduced to make the title conform to the Revision of Title 2A. There is no statement. The fourth section changes the form of the proceedings.

1937 RS 52:14-7 The 1937 Revision changed the wording of the earlier law and separated the provisions as to state officers from the one relating to county, municipality, etc. The gist of the law is the same. No comments in the 1934 Report on the Revision.

1876 L. 1876, Ch. 83, Senate 10

Senate 10 was introduced without a statement. We know from the journal that it was amended at least once in the Senate. The amendments added on line 21 after "duties of such office" the words "in cases where scientific engineering skill is necessary to the performance of the duties thereof;" and on line 26 omitted the wording from "person or persons desiring to sue or prosecute the same," and added the whole paragraph starting with "any officer of the state, if the offending officer, etc."

We are enclosing Senate 10 for your information.

1846 The 1876 law was based on an act passed in connection with the General Revision of 1846. (Sen. 42). Revised Statutes 1846, Ch. 21. There are no comments on the Revision, it passed unamended.

1778 However, the gist of the statute was taken out of an earlier law passed on Oct. 8, 1778 and which appears in Revision of 1820, Pennington, page 52.

SENATE, No. 10.

STATE OF NEW JERSEY.

A SUPPLEMENT to an act entitled "An act relative to offices, commissions and resignations," approved April sixteen, eighteen hundred and forty-six, (revision).

1 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,*
2 That the first section of the act to which this is a supplement, being in the
3 following words, viz: "Each and every person holding or who shall hereafter
4 hold any office in this state under the authority thereof, shall reside within
5 this state and execute such office; and also, that every person holding an
6 office, the authority and duties of which relate to a county only, shall reside
7 within such county; and if any person holding or who shall hereafter hold any
8 office as aforesaid, shall at any time presume to let, farm out or transfer such
9 office, or any part thereof, to any person or persons whatsoever he shall for
10 such offence forfeit the sum of fifteen hundred dollars, to be recovered
11 with full costs of suit, by any person who will sue for the same, one half to
12 the prosecutor, and the other half to the Treasurer, for the use of the
13 state," be amended by adding the following words, to come in after
14 the word "county" where it last occurs in said section, "and also
15 that every person holding an office, the authority and duties of which
16 relate to a city or township, shall reside within such city or township;" and
17 that said section be further amended by adding the following proviso, to come
18 in at the end of the section: "*provided*, that it shall not be lawful for any per-
19 son to be appointed to, or hold any office in this state, or any county, city or

20 township thereof, who has not the requisite qualifications for personally per-
21 forming the duties of such office; and any person holding, or attempting to
22 hold any office in violation of this act, shall be considered as illegally holding
23 or attempting to hold the same; and the supreme court of this state may give
24 judgment of ouster against such person, upon information proceeded upon in
25 such manner as is usual in cases of information in nature of a quo warranto,
26 at the relation of any person or persons desiring to sue or prosecute the same.

1 2. *And be it enacted*, That this act shall take effect immediately.

SENATE, No. 123.

STATE OF NEW JERSEY.

INTRODUCED FEBRUARY 21, 1911.

By Mr. ACKERMAN.

Referred to Committee on Judiciary.

AN ACT to amend an act entitled "An act regulating the employment, tenure and discharge of certain officers and employes of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight.

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

1 1. Section eighteen of the act of which this act is an amendment is hereby
2 amended to read as follows:

3 18. All examinations required to be held by the provisions of this act both for
4 positions in the competitive class and the non-competitive class, or any other class
5 where examinations are required to be held, shall be free to all citizens of the
6 State of New Jersey within the limitations specified in the rules of the commission
7 as to residence, age, sex, health, habits and moral character. The commission
8 may, when in its judgment the position for which an examination is to be held is
9 of such a character as to require special technical training and specialization in a
10 line of work for which candidates are not readily obtainable, admit to examina-
11 tion citizens of other States. The commission shall state in its annual report the
12 reasons for its action in the case of each examination of this character. Such ex-
13 aminations shall be practical in their character and shall relate to those matters

14 which will fairly test the relative capacity of the persons examined to discharge the
15 duties of the position to which they seek to be appointed, and may include tests of
16 physical qualifications and health, and when appropriate, of manual skill. No ques-
17 tion in any examination shall relate to the political or religious opinions or affilia-
18 tions. The commission shall control all examinations, and may, whenever an ex-
19 amination is to take place, designate a suitable person or persons either in or not
20 in the official service of the State, to be examiners, and it shall be the duty of such
21 examiners, and if in the official service it shall be part of their official duty, without
22 extra compensation, to conduct such examinations as the commission may direct,
23 and to make return or report thereof to said commission; and the said commis-
24 sion may at any time substitute any other person, whether or not in such service,
25 in the place of anyone so selected, and the commission may themselves at any time
26 act as such examiners and without appointing examiners. Such examinations shall
27 be held in such locality or localities as will most readily provide equal opportunity
28 for all citizens of the said State with reference to position in the service of the State,
29 or to all citizens of any municipality that may hereafter adopt the provisions of
30 this act with reference to positions in the service of the said municipality. Due and
31 sufficient notice thereof being given in such manner that all persons interested in
32 the said examinations may have an opportunity of learning of the time, place and
33 conditions of the said examinations. Such notice of the time and place and
34 general scope of every examination shall be given by the commission, by publica-
35 tion, for two weeks preceding such examination, in such newspapers of general
36 circulation throughout the State as the commission shall prescribe, and such
37 notice in printed form shall also be sent by the commissioners to the county clerks
38 of each county, and by them promptly posted in a conspicuous place in the clerk's
39 office of the said county.

1 2. This act shall take effect immediately.

ASSEMBLY AMENDMENTS TO
SENATE, No. 123.

STATE OF NEW JERSEY.

1 Amend by inserting after the comma following the word "obtainable", in line
2 ten (10) the following: "and when advertisement in the manner provided for in
3 this act shall have failed to produce from among the citizens of New Jersey persons
4 eligible to the position to be filled".

COMMITTEE SUBSTITUTE FOR
ASSEMBLY, NO. 172

(P. L. 1908, page 235, Chapter 156.)

STATE OF NEW JERSEY

ADOPTED FEBRUARY 12, 1924.

A SUPPLEMENT to an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a Civil Service Commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight.

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

1 1. For all positions and employments in the classified civil service, where the
2 service is to be rendered in a particular county or municipality and payment for such
3 service is made from the funds of such county or municipality, the Civil Service
4 Commission shall limit the eligibility of those entering the examination or seeking
5 appointment to the qualified residents of the county or municipality in which the
6 service is to be rendered and from the funds of which the employee is to be paid.

1 2. This act shall take effect immediately.

STATEMENT.

Under existing classification probation officers, detectives, interpreters, Juvenile Court attendants and other subordinate employees connected with these departments and the courts are in the classified service of the State, being appointed by State officers. These employees serve their respective counties and municipalities and are paid out of county or municipal funds. Examinations for these positions are now open to qualified residents of the State. This bill proposes to limit eligibility to the residents of the county or municipality in which the service is rendered and from whose funds the em-

ployee is paid. It is a "home rule" measure, and in harmony with employment conditions set forth in Chapter 185, P. L. 1918.

This bill is approved of by both the Civil Service Commission and the Association of Chosen Freeholders.

ASSEMBLY, No. 21

STATE OF NEW JERSEY

INTRODUCED JANUARY 14, 1935

By Mr. SCHROEDER

Referred to Committee on Claims and Pensions

AN ACT to amend an act entitled "An act concerning municipalities," approved March twenty-seventh, one thousand nine hundred and seventeen.

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

1 1. Section three of Article XVII of an act entitled "An act concerning
2 municipalities," approved March twenty-seventh, one thousand nine hundred
3 and seventeen, be amended so as to read as follows:

4 3. The officers and men employed in every municipal paid fire depart-
5 ment and the paid members of every municipal part-paid fire department
6 shall severally hold their respective offices and continue in their respective
7 employment during good behavior, efficiency and residence in the municipality
8 wherein they are respectively employed; and no person shall be removed
9 from office or employment in any such paid fire department nor shall the paid
10 members be removed from any part-paid fire department or from the paid
11 fire department of any such municipality for political reasons or for any
12 other cause than incapacity, misconduct, nonresidence or disobedience of
13 just rules and regulations established or which may be for the paid or part-
14 paid fire department in such municipality; *provided*, that any member of any
15 such paid fire department or a paid member of any part-paid fire depart-
16 ment who shall be absent from duty without just cause for the term of five days
17 continuously shall, at the expiration of such five days, cease to be a member of

18 such paid or part-paid fire department; each officer and member of any such
 19 paid fire department or paid member of any part-paid fire department shall
 20 be a citizen of the United States and a resident for two years next preceding
 21 his appointment of the municipality in which he is appointed; he must be of
 22 good moral character, sound in body and of good health, and able to read
 23 and write the English language intelligently; *and provided, further*, that it
 24 shall be lawful for the board, body or person in the respective municipalities
 25 of this State having authority to employ members of the fire department
 26 therein to employ officers or men temporarily in cases of emergency, or for
 27 parts of years in cases where their services are not needed throughout the
 28 entire year, and discharge them at the expiration of such temporary employ-
 29 ment.

1 2. All acts and parts of acts inconsistent with the provisions of this act
 2 be and the same are hereby repealed, and this act shall take effect im-
 3 mediately.

STATEMENT

In several municipalities of this State a full paid fire department has not been established, but a number of paid, uniformed members are employed in volunteer departments, and doubt has arisen as to whether those men are protected by the tenure of office act. The purpose of this act is to clarify any doubt which might exist as to the status of the paid firemen employed in part-paid fire departments.

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2 *Jersey:*

1 1. Section three of Article XVII of an act entitled "An act concerning
2 municipalities," approved March twenty-seventh, one thousand nine hundred
3 and seventeen, be amended so as to read as follows:

4 3. The officers and men employed in every municipal paid fire depart-
5 ment and the paid members of every municipal part-paid fire department
6 who are permanently employed by the municipality at a fixed annual salary
7 and whose sole occupation is that of fireman in said municipal part-paid
8 fire department shall severally hold their respective offices and continue in
9 their respective employment during good behavior, efficiency and residence
10 in the municipality wherein they are respectively employed; and no person
11 shall be removed from office or employment in any such paid fire depart-
12 ment nor shall any member of any municipal part-paid fire department who
13 is permanently employed by the municipality at a fixed annual salary and
14 whose sole occupation is that of fireman in said municipal part-paid fire
15 department or from the paid fire department of any such municipality for
16 political reasons or for any other cause than incapacity, misconduct, non-
17 residence or disobedience of just rules and regulations established or which
18 may be for the paid or part-paid fire department in such municipality; *pro-*

19 *vided*, that any member of any such paid fire department or any member of
20 any municipal part-paid fire department who is permanently employed by
21 the municipality at a fixed annual salary and whose sole occupation is that
22 of fireman in said municipal part-paid fire department who shall be absent
23 from duty without just cause for the term of five days continuously shall,
24 at the expiration of such five days, cease to be a member of such paid or
25 part-paid fire department; each officer and member of any such paid fire
26 department and each member of any municipal part-paid fire department
27 who is permanently employed by the municipality at a fixed annual salary
28 and whose sole occupation is that of fireman in said municipal part-paid fire
29 department shall be a citizen of the United States and a resident for two years
30 next preceding his appointment of the municipality in which he is ap-
31 pointed; he must be of good moral character, sound in body and of good
32 health, and able to read and write the English language intelligently; *and*
33 *provided, further*, that it shall be lawful for the board, body or person in
34 the respective municipalities of this State having authority to employ mem-
35 bers of the fire department therein to employ officers or men temporarily in
36 cases of emergency, or for parts of years in cases where their services are
37 not needed throughout the entire year, and discharge them at the expira-
38 tion of such temporary employment.

1 2. All acts and parts of acts inconsistent with the provisions of this act
2 be and the same are hereby repealed, and this act shall take effect im-
3 mediately.

[OFFICIAL COPY REPRINT]
SENATE AMENDMENTS TO
ASSEMBLY, No. 21

STATE OF NEW JERSEY

ADOPTED MAY 13, 1935

Amend line 5, on page 1, by inserting after the word "department" "who are permanently employed by the municipality at a fixed annual salary and whose sole occupation is that of fireman in said municipal part-paid fire department".

Amend line 9, page 1, by striking out "the paid members be removed from any part-paid fire department".

Amend line 9, page 1, after the word "shall" by inserting "any member of any municipal part-paid fire department who is permanently employed by the municipality at a fixed annual salary and whose sole occupation is that of fireman in said municipal part-paid fire department".

Amend line 15, page 1, by striking out "a paid member of any part-paid fire department" and add to line 15 after the word "or" "any member of any municipal part-paid fire department who is permanently employed by the municipality at a fixed annual salary and whose sole occupation is that of fireman in said municipal part-paid fire department".

Amend line 19, page 2, by striking out the words "or paid member of any part-paid fire department" and add after the word "department" "and each member of any municipal part-paid fire department who is permanently employed by the municipality at a fixed annual salary and whose sole occupation is that of fireman in said municipal part-paid fire department".

SENATE, No. 133

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 21, 1944

By Mr. FARLEY

Referred to Committee on Judiciary

AN Act to establish a Department of Law in the Executive Department or branch of the State government and to prescribe the powers and duties of said department; to centralize in such department such facilities, afforded by the State for the rendering of legal services to the Governor and to the various officers, departments, boards, bodies, commissions and instrumentalities in the Executive Department or branch of the State government, as will promote economy and efficiency in the conduct of the State government; to provide for the enforcement of the criminal law of the State by such department when the ends of justice so require; to require the prosecutors of the pleas of the various counties to make report of the performance of their duties and the operation of their respective offices to the Attorney-General as head of the Department of Law; to abolish certain offices and positions; and to repeal chapter seventeen of Title 52 of the Revised Statutes and "An act concerning the State Highway Department," approved May twenty-fourth, one thousand nine hundred and thirty-nine (P. L. 1939, c. 75); "An act concerning the legal assistants to the Attorney-General," approved June twenty-seventh, one thousand nine hundred and thirty-nine (P. L. 1939, c. 101); "A supplement to an act entitled 'An act to define the duties and fix the salary of the Attorney-General,' approved February twenty-fourth, one thousand eight hundred and fifty-four," approved March twenty-fifth, one thousand nine hundred and thirteen (P. L.

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1913, c. 139); "An act to amend an act entitled 'A supplement to an act entitled "An act to define the duties and fix the salary of the Attorney-General," approved February twenty-fourth, one thousand eight hundred and fifty-four,' which said supplement was approved March twenty-fifth, one thousand nine hundred and thirteen," approved March fourth, one thousand nine hundred and eighteen (P. L. 1918, c. 234).

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

1 1. The purpose of this act is to accomplish economy and efficiency by cen-
2 tralizing, in one department, the facilities afforded by the State for the ren-
3 dering of legal services to the Governor and to all officers, departments,
4 boards, bodies, commissions and instrumentalities in the Executive Depart-
5 ment or branch of the State government and to provide for the enforcement
6 of the criminal law of the State by such department where the ends of
7 justice so require.

1 2. There is hereby established a Department of Law in the Executive
2 Department or branch of the State government.

1 3. The head of the Department of Law shall be the Attorney-General,
2 who shall receive an annual salary of fifteen thousand dollars (\$15,000.00).

1 4. It shall be the duty of the Department of Law, by the Attorney-Gen-
2 eral or by such of his deputies as he shall designate, to

3 a. Be present at the seat of the government during the sessions of
4 the Legislature;

5 b. Give to the Governor, to the members of the Senate and the Gen-
6 eral Assembly, and to all other officers, departments, boards, bodies,
7 commissions and instrumentalities in the Executive Department or
8 branch of the State government, legal advice on such matters as they
9 may from time to time request;

10 c. Examine and decide all cases submitted for his opinion by the
11 Governor or by any officer, department, board, body, commission or in-
12 strumentality in the Executive Department or branch of the State gov-

ernment and inspect the title papers upon all applications for loans of the school fund;

d. Carry out and enforce the provisions of the New Jersey securities law:

e. Act as the sole legal adviser, attorney or counsel, notwithstanding the provisions of any other law, for all officers, departments, boards, bodies, commissions and instrumentalities in the Executive Department or branch of the State government in all matters other than those requiring the performance of administrative functions entailing the enforcement, prosecution and hearing of issues as imposed by law upon them; and represent them in all suits, proceedings or actions of any kind which may be brought for or against them in any courts of this State;

f. Render aid in the prosecution of the criminal business of any county at the written request of the prosecutor of the pleas of the county; prosecute the criminal business of the State in a county having no prosecutor of the pleas; attend for the trial of homicide cases and other high crimes and misdemeanors, or for the prosecution of the criminal business of the State, in any county, on the written request of a justice of the Supreme Court or of the board of chosen freeholders of the county; and attend for the prosecution of a specific investigation or of a particular criminal case in any county on the written request of the Governor.

g. Attend generally to all legal matters in which the State or any officer, department, board, body, commission or instrumentality in the Executive Department or branch of the State government is a party or in which its rights or interests are involved;

h. Succeed to all the powers and be charged with all of the duties conferred and imposed by law upon the Attorney-General.

5. Whenever the Attorney-General, personally or by his deputies, shall attend in any county, at the request of the Governor or of a justice of the Supreme Court or of the board of chosen freeholders or of the prosecutor of the pleas of the county, for the prosecution of the criminal business of

5 the State in said county or of such part thereof as shall be designated in, or
6 as shall fall within the general purview of the matters designated in, the
7 written request therefor, the Attorney-General and his deputies shall have
8 all the power and authority of the prosecutor of the pleas for prosecuting
9 the criminal business of the State or such part thereof, including the in-
10 vestigation of alleged crimes and misdemeanors, the attendance before the
11 criminal courts and grand juries of the county, the preparation and trial of
12 indictments for crimes and misdemeanors and the representation of the State
13 in all proceedings in criminal cases on error or otherwise in the courts of
14 this State.

15 Whenever the criminal business or any part of the criminal business of
16 any county is prosecuted by the Attorney-General, personally or by his dep-
17 uties, there shall be paid, by the treasurer of the county, such sum for that
18 special service as the justice of the Supreme Court of that judicial district
19 or a judge of the court of common pleas of said county shall certify and
20 fix, on the application of the Attorney-General; *provided*, that the compen-
21 sation allowed shall not exceed that provided by law for the payment of the
22 prosecutor in said county for the same or similar services.

23 In prosecuting such criminal business, the Attorney-General shall have
24 power to employ such investigators, clerical and other assistants and to
25 incur such expenses as he shall determine and the cost thereof, including the
26 compensation allowed as aforesaid of any deputy attorneys-general who
27 shall be employed or designated by the Attorney-General for that special
28 purpose in addition to those regularly employed in the Department of Law,
29 shall likewise be paid by the treasurer of the county when certified and fixed
30 in the same manner.

1 6. The Attorney-General may appoint as his legal assistants in the
2 Department of Law deputy attorneys-general and assistant deputy attorneys-
3 general who shall perform such duties as the Attorney-General shall from
4 time to time designate.

1 7. Deputy attorneys-general in the Department of Law shall hold their
2 offices at the pleasure of the Attorney-General and shall receive such sal-
3 aries as he shall from time to time designate.

1 8. Assistant deputy attorneys-general of the Department of Law shall
2 be appointed by the Attorney-General at his pleasure and, after six years'
3 service in their positions, they shall hold their positions during efficiency
4 and good behavior and shall not be removed therefrom except for good
5 cause, and not because of religious or political opinions or affiliations, after
6 a public, fair and impartial hearing before the Civil Service Commission.
7 They shall receive such salaries, not exceeding the sum of seventy-five
8 hundred dollars (\$7,500.00) per year, as the Attorney-General shall from
9 time to time designate and shall devote their entire time to the perform-
10 ance of their duties in the Department of Law and shall not engage in the
11 private practice of law.

1 9. No member of the Department of Law shall act as attorney or counsel
2 in any controversy in which the State has an adverse interest, except in his
3 official capacity.

1 10. No member of the Department of Law shall receive any compensa-
2 tion, fees or costs in addition to his regular salary for or by reason of any
3 service performed by him for the State or for any political subdivision
4 thereof except by allowance or appropriation by the Legislature and any
5 additional compensation, fees or costs so payable to or received by any mem-
6 ber of the Department of Law, not so allowed or appropriated, shall be paid
7 to the State Treasurer for the use of the State, but the provisions of this
8 section shall not be construed to prevent the payment of compensation of
9 any additional deputy attorney-general, who may be employed or designated
10 by the Attorney-General to act in any county under section five of this act,
11 by the county in which he is designated to act by the Attorney-General.

1 11. No officer, department, board, body, commission or instrumentality
2 in the Executive Department or branch of the State government shall em-
3 ploy any person to act as attorney, counsel, solicitor, legal assistant or

4 other legal adviser to such officer, department, board, body, commission or
5 instrumentality except under full-time employment solely in the perform-
6 ance of administrative functions entailing the enforcement, prosecution and
7 hearing of issues as imposed by law upon such officer, department, board,
8 body, commission or instrumentality.

1 12. The Attorney-General may assign a deputy attorney-general or an
2 assistant deputy attorney-general to serve in any legal capacity in or for
3 any officer, department, board, body, commission or instrumentality of the
4 Executive Department or branch of the State government on a part-time or
5 full-time basis whenever, in the judgment of the Attorney-General, such as-
6 signment will contribute to the efficiency of the operation of such office,
7 department, board, body, commission or instrumentality, but such member of
8 the Department of Law shall remain under the supervision and control of
9 the Attorney-General while so serving and his compensation shall be pay-
10 able solely from appropriations made to the Department of Law.

1 13. No special counsel shall be employed for the State or for or by any
2 officer, department, board, body, commission or instrumentality in the Ex-
3 ecutive Department or branch of the State government except by authority
4 of the Attorney-General and then only in cases to be tried without the State
5 or in which the State joins or is joined with another State but this provision
6 shall not apply in any case in which the employment of special counsel is
7 authorized by law enacted prior to the employment.

1 14. The Attorney-General shall make an annual detailed report to the
2 Governor of the performance of his duties and the operations of the Depart-
3 ment of Law and shall make such other reports to the Governor as the
4 Governor may require from time to time.

1 15. The prosecutors of the pleas of the various counties shall make an-
2 nual detailed reports to the Attorney-General of the performance of their
3 duties and the operations of their offices and shall make such other reports
4 to the Attorney-General as the Attorney-General may require from time to
5 time.

1 16. The Department of the Attorney-General heretofore existing and
2 the offices and positions of assistant attorneys-general, legal assistants to
3 the Attorney-General, special counsel or legal counsel to or by appointment
4 of or under the Attorney-General hereby are abolished and all other em-
5 ployees of the Department of the Attorney-General hereby are transferred
6 to the Department of Law and shall serve in appropriate similar positions
7 in said department and shall retain all of their rights and privileges under
8 Title 11, Civil Service, of the Revised Statutes.

1 17. All officers and positions of attorneys, counsel, solicitors, or other
2 legal advisers to any officer, department, board, body, commission or in-
3 strumentality in the Executive Department or branch of the State govern-
4 ment hereby are abolished, except such offices or positions in which the incum-
5 bents are employed, under full-time employment, solely in the performance
6 of administrative functions entailing the enforcement, prosecution and hear-
7 ing of issues as imposed by law upon such officer, department, board, body,
8 commission or instrumentality.

1 18. The offices and quarters heretofore occupied by the Department of
2 the Attorney-General and all books, papers, documents and other property of
3 the Department of the Attorney-General hereby are transferred to the De-
4 partment of Law as of the date upon which this act becomes effective.

1 19. All moneys appropriated at the time this act becomes effective to
2 the Attorney-General or to any officer, department, board, body, commission
3 or instrumentality in the Executive Department or branch of the State gov-
4 ernment for the compensation and expenses of attorneys, counsel, solicitors
5 or other legal advisers to such officer, department, board, body, commission
6 or instrumentality, whose offices or positions are abolished by this act, shall
7 be transferred and made available to the Department of Law as of said date
8 or as and when such appropriation shall become available.

1 20. Chapter seventeen of Title 52 of the Revised Statutes and "An act
2 concerning the State Highway Department," approved May twenty-fourth,
3 one thousand nine hundred and thirty-nine (P. L. 1939, c. 75); "An act con-

cerning the legal assistants to the Attorney-General," approved June twenty-
seventh, one thousand nine hundred and thirty-nine (P. L. 1939, c. 101);
"A supplement to an act entitled 'An act to define the duties and fix the
salary of the Attorney-General,' approved February twenty-fourth, one thou-
sand, eight hundred and fifty-four," approved March twenty-fifth, one thou-
sand nine hundred and thirteen (P. L. 1913, c. 139); "An act to amend an act
entitled 'A supplement to an act entitled "An act to define the duties and
fix the salary of the Attorney-General," approved February twenty-fourth,
one thousand eight hundred and fifty-four,' which said supplement was ap-
proved March twenty-fifth, one thousand nine hundred and thirteen," ap-
proved March fourth, one thousand nine hundred and eighteen (P. L. 1918,
c. 234) are repealed.

21. This act shall take effect immediately.

COMMITTEE SUBSTITUTE FOR

SENATE, No. 133

STATE OF NEW JERSEY

ADOPTED MARCH 6, 1944

AN ACT to establish a Department of Law in the State Government.

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

1 1. The purpose of this act is to accomplish economy and efficiency by
2 centralizing, in one department, the facilities afforded by the State for the
3 rendering of legal services to the Governor and to all officers, departments,
4 boards, bodies, commissions and instrumentalities of the State Government
5 and to provide for the enforcement of the criminal law of the State by such
6 department where the ends of justice so require.

1 2. There is hereby established a Department of Law in the State Govern-
2 ment. The Attorney-General shall be the head of said department and the
3 Attorney-General shall be nominated by the Governor and appointed by
4 him with the advice and consent of the Senate and shall hold his office for
5 the term of five years.

1 3. The Department of Law shall be administered by the Attorney-
2 General and his deputy attorneys-general and deputy assistant attorneys-
3 general as herein provided.

4 The Attorney-General shall receive an annual salary of fifteen thousand
5 dollars (\$15,000.00).

1 4. The powers and duties of the Department of Law shall be the powers
2 and duties now or hereafter conferred upon or required of the Attorney-
3 General, either by the Constitution or by the common and statutory law of
4 the State, and as specifically but not exclusively as detailed herein, to wit:

5 a. Be present at the seat of the government during the sessions of
6 the Legislature;

7 b. Give to the Governor, to the members of the Senate and the Gen-
8 eral Assembly, and to all other officers, departments, boards, bodies,
9 commissions and instrumentalities of the State Government, legal advice
10 on such matters as they may from time to time require.

11 c. Examine and decide all legal matters submitted to him by the
12 Governor or the Legislature and act for them in any matter in which
13 they may be interested, and shall exclusively attend to and control all
14 litigation and controversies to which the State is a party or in which its
15 rights and interests are involved.

16 d. Carry out and enforce the provisions of the New Jersey secu-
17 rities law; also the civil rights law.

18 e. Act as the sole legal adviser, attorney or counsel, notwithstand-
19 ing the provisions of any other law, for all officers, departments, boards,
20 bodies, commissions and instrumentalities of the State Government in all
21 matters other than those requiring the performance of administrative
22 functions entailing the enforcement, prosecution and hearing of issues as
23 imposed by law upon them; and represent them in all suits, proceed-
24 ings or actions of any kind which may be brought for or against them
25 in any court of this State; and shall likewise interpret all statutes and
26 legal documents, inspect and approve contracts and titles and otherwise
27 control their legal activities.

28 f. Render aid in the prosecution of the criminal business of any
29 county at the written request of the prosecutor of the pleas of the county;
30 prosecute the criminal business of the State in a county having no pros-
31 ecutor of the pleas; attend for the trial of homicide cases and other
32 high crimes and misdemeanors, or for the prosecution of the criminal
33 business of the State, in any county, on the written request of a Jus-
34 tice of the Supreme Court or of the board of chosen freeholders of the
35 county; and attend for the prosecution of a specific investigation or of

36 a particular criminal case in any county on the written request of the
37 Governor.

38 g. Attend generally to all legal matters in which the State or any
39 officer, department, board, body, commission or instrumentality of the
40 State Government is a party or in which its rights or interests are
41 involved;

42 h. Enforce the provisions of the Constitution and all other laws of
43 the State, as well as perform all of the duties conferred and imposed
44 by law upon the Attorney-General.

1 5. Whenever the Attorney-General, personally or by his deputies or
2 assistants, shall attend in any county where there is no prosecutor, or at
3 the request of the Governor or of a Justice of the Supreme Court or of the
4 board of chosen freeholders or of the prosecutor of the pleas of the county,
5 for the prosecution of the criminal business of the State in said county or
6 of such part thereof as shall be designated in, or as shall fall within the
7 general purview of the matters designated in, the written request therefor,
8 the Attorney-General and his deputies or assistants shall have all the power
9 and authority of the prosecutor of the pleas for prosecuting the criminal
10 business of the State or such part thereof, including the investigation of
11 alleged crimes and misdemeanors, the attendance before the criminal courts
12 and grand juries of the county, the preparation and trial of indictments
13 for crimes and misdemeanors and the representation of the State in all pro-
14 ceedings in criminal cases on error or otherwise in the courts of this State.
15 Whenever the Attorney-General shall have taken over the duties of a
16 prosecutor of the pleas, he shall have all of the authority conferred by law
17 upon the prosecutor, and he may appoint such temporary assistants as he
18 may deem necessary, and shall also have power to appoint such aids, inves-
19 tigators or other personnel and clerical assistants as he shall deem neces-
20-22 sary.

23 Whenever the criminal business or any part of the criminal business of
24 any county is prosecuted by the Attorney-General, personally or by his depu-

25 ties or assistants, there shall be paid, by the treasurer of the county, such
 26 sum for that special service as the Justice of the Supreme Court of that
 27 judicial district or a judge of the court of common pleas of said county
 28 shall certify and fix, on the application of the Attorney-General; *provided*,
 29 that the compensation allowed shall not exceed that provided by law for
 29½ the payment of the prosecutor in said county for the same or similar services;
 30 *provided, however*, that no compensation so allowed shall affect the salary of
 30½ the prosecutor or assistant prosecutors if any in said county.

31 In prosecuting such criminal business, the Attorney-General shall have
 32 power to employ such investigators, clerical and other assistants and to
 33 incur such expenses as he shall determine, and the cost thereof, including
 34 the compensation allowed as aforesaid of any deputy or assistant attorneys-
 35 general who shall be employed or designated by the Attorney-General for
 36 that special purpose in addition to those regularly employed in the Depart-
 37 ment of Law, shall likewise be paid by the treasurer of the county when
 38 certified and fixed in the same manner.

1 6. The Attorney-General may appoint as his legal assistants in the
 2 Department of Law deputy attorneys-general and assistant deputy attorneys-
 3 general who shall perform such duties as the Attorney-General shall from
 4 time to time designate. The Attorney-General may also appoint necessary
 5 clerks and employees and fix their compensation.

1 7. Deputy attorneys-general in the Department of Law shall hold their
 2 offices at the pleasure of the Attorney-General and shall receive such sal-
 3 aries as he shall from time to time designate.

1 8. Assistant deputy attorneys-general of the Department of Law shall
 2 be appointed by the Attorney-General at his pleasure and, after three years'
 3 service in their positions, they shall hold their positions during efficiency
 4 and good behavior and shall not be removed therefrom except for good cause,
 5 and not because of religious or political opinions or affiliations, after a pub-
 6 lic, fair and impartial hearing before the Civil Service Commission. They
 7 shall receive such salaries, not exceeding the sum of seventy-five hundred
 8 dollars (\$7,500.00) per year, as the Attorney-General shall from time to

9 time designate and shall devote their entire time to the performance of their
10 duties in the Department of Law, and shall not engage in the private prac-
11 tice of law.

1 9. No member of the Department of Law shall act as attorney or counsel
2 in any controversy in which the State has an interest, except in his official
3 capacity.

1 10. No member of the Department of Law shall receive any compensa-
2 tion, fees or costs in addition to his regular salary for or by reason of any
3 service performed by him for the State or for any political subdivision
4 thereof except by allowance or appropriation by the Legislature, and any
5 additional compensation, fees or costs so payable to or received by any mem-
6 ber of the Department of Law, not so allowed or appropriated, shall be paid
7 to the State Treasurer for the use of the State; but the provisions of this
8 section shall not be construed to prevent the payment of compensation of
9 any additional deputy attorney-general, who may be employed or designated
10 by the Attorney-General solely to act in any county under section five of
11 this act, by the county in which he is designated to act by the Attorney-
12 General.

1 11. No officer, department, board, body, commission or instrumentality
2 of the State Government shall employ any person to act as attorney, coun-
3 sel, solicitor, legal assistant or other legal adviser to such officer, department,
4 board, body, commission or instrumentality. Nor shall such officer, depart-
5 ment, board, body, commission or instrumentality of the State Government
6 employ any person in any legal capacity for the purpose of giving legal
7 advice or rendering legal services, but such officer, department, board, body,
8 commission or instrumentality may employ an attorney-at-law under full-
9 time employment solely in the performance of administrative functions entail-
10 ing the hearing of issues and determining facts in order that the said officer,
11 department, board, body, commission or instrumentality may perform his
12 or its functions as required by law; *provided, however*, that no such attorney
13 shall act in a legal capacity in the prosecution of any charge or complaint
14 before any such officer, department, board, body, commission or instru-
15 mentality.

1 12. The Attorney-General may assign a deputy attorney-general or an
2 assistant deputy attorney-general to serve in any legal capacity in or for
3 any officer, department, board, body, commission or instrumentality of the
4 State Government on a part-time or full-time basis whenever, in the judg-
5 ment of the Attorney-General, such assignment will contribute to the effi-
6 ciency of the operation of such office, department, board, body, commission
7 or instrumentality, but such member of the Department of Law shall remain
8 under the supervision and control of the Attorney-General while so serving
9 and his compensation shall be payable solely from appropriations made to the
10 Department of Law.

1 13. No special counsel shall be employed for the State or for or by
2 any officer, department, board, body, commission or instrumentality of the
3 State Government except by authority of the Attorney-General, and then
4 only with the approval of the Governor, and provided that appropriations
5 have been made therefor, unless the matter be of such an emergency and
6 shall be so declared by the Governor.

1 14. The Attorney-General shall make an annual detailed report to the
2 Governor and the Legislature of the performance of his duties and the opera-
3 tions of the Department of Law and shall make such other reports to the
4 Governor and the Legislature as the Governor or the Legislature may require
5 from time to time.

1 15. The prosecutors of the pleas of the various counties shall make
2 annual reports to the Attorney-General of the performance of their duties
3 and the operations of their offices and shall make such other reports to the
4 Attorney-General as the Attorney-General may require from time to time.

1 16. The Department of the Attorney-General heretofore existing and the
2 offices and positions of assistant attorneys-general, legal assistants to the
3 Attorney-General, special counsel or legal counsel to or by appointment of
4 or under the Attorney-General hereby are abolished, and all other employees
5 of the Department of the Attorney-General hereby are transferred to the
6 Department of Law and shall serve in appropriate similar positions in said

7 department and shall retain all of their rights and privileges under Title 11,
8 Civil Service, of the Revised Statutes.

1 17. All offices and positions of attorneys, counsel, solicitors, or other
2 legal advisers to any officer, department, board, body, commission or instru-
3 mentality of the State Government hereby are abolished, except such offices
4 or positions in which the incumbents are employed, under full-time employ-
5 ment, solely in the performance of administrative functions entailing the
6 enforcement, prosecution and hearing of issues as imposed by law upon such
7 officer, department, board, body, commission or instrumentality; *provided*,
8 *however*, that all boards, bodies, commissions, agencies or public corporate
9 instrumentalities of this State created by compact or agreement with a com-
10 monwealth or another State are excluded from the provisions and the effect
11 of this act.

1 18. The offices and quarters heretofore occupied by the Department of
2 the Attorney-General and all books, papers, documents and other property
3 of the Department of the Attorney-General hereby are transferred to the
4 Department of Law as of the date upon which this act becomes effective.

1 19. All moneys appropriated at the time this act becomes effective to
2 the Attorney-General or to any officer, department, board, body, commis-
3 sion or instrumentality of the State Government for the compensation and
4 expenses of attorneys, counsel, solicitors or other legal advisers to such offi-
5 cer, department, board, body, commission or instrumentality, whose offices
6 or positions are abolished by this act, shall be transferred and made avail-
7 able to the Department of Law as of said date or as and when such appro-
8 priation shall become available. Until appropriations may become available
9 for the next fiscal year, there is hereby appropriated the additional sum of
10 fourteen thousand dollars (\$14,000.00) for the payment of the salaries of the
11 Attorney-General as fixed herein and his deputies and assistants as fixed
12 by him, and also the expenses of the Attorney-General, his deputies and
13 assistants.

1 20. Chapter seventeen of Title 52 of the Revised Statutes and "An act
2 concerning the State Highway Department," approved May twenty-fourth,
3 one thousand nine hundred and thirty-nine (P. L. 1939, c. 75); "An act con-
4 cerning the legal assistants to the Attorney-General," approved June twenty-
5 seventh, one thousand nine hundred and thirty-nine (P. L. 1939, c. 101);
6 "A supplement to an act entitled 'An act to define the duties and fix the
7 salary of the Attorney-General,' approved February twenty-fourth, one thou-
8 sand eight hundred and fifty-four," approved March twenty-fifth, one thou-
9 sand nine hundred and thirteen (P. L. 1913, c. 139); "An act to amend an
10 act entitled 'A supplement to an act entitled "An act to define the duties
11 and fix the salary of the Attorney-General," approved February twenty-
12 fourth, one thousand eight hundred and fifty-four,' which said supplement
13 was approved March twenty-fifth, one thousand nine hundred and thirteen,"
14 approved March fourth, one thousand nine hundred and eighteen (P. L. 1918,
15 c. 234), are repealed.

1 21. This act shall take effect immediately.

1 19. Section 52:16-4 of the Revised Statutes is amended to read as
2 follows:

3 52:16-4. The Secretary of State shall keep his office within the city of
4 Trenton.

1 20. Section 52:16-8 of the Revised Statutes is amended to read as
2 follows:

3 52:16-8. The Secretary of State shall, with all convenient speed, record
4 all papers which shall come to his hands and which it is his duty to record,
5 and also file such papers in his office, agreeably to law.

1 21. Section four of chapter twenty of the laws of one thousand nine hun-
2 dred and forty-four is amended to read as follows:

3 4. The powers and duties of the Division of Law shall be the powers
4 and duties now or hereafter conferred upon or required of the Attorney-
5 General, either by the Constitution or by the common and statutory law of
6 the State, and as specifically but not exclusively as detailed herein, to wit:

7 a. Be present at the seat of the government during the sessions of the
8 Legislature;

9 b. Give to the Governor, to the members of the Senate and the General
10 Assembly, and to all other officers, departments, boards, bodies, commissions
11 and instrumentalities of the State Government, legal advice on such matters
12 as they may from time to time require.

13 c. Examine and decide all legal matters submitted to him by the Gover-
14 nor or the Legislature and act for them in any matter in which they may be
15 interested, and shall exclusively attend to and control all litigation and con-
16 troversies to which the State is a party or in which its rights and interests
17 are involved.

18 d. Carry out and enforce the provisions of the New Jersey Securities
19 Law; also the Civil Rights Law.

20 e. Act as the sole legal adviser, attorney or counsel, notwithstanding the
21 provisions of any other law, for all officers, departments, boards, bodies, com-
22 missions and instrumentalities of the State Government in all matters other

23 than those requiring the performance of administrative functions entailing
 24 the enforcement, prosecution and hearing of issues as imposed by law upon
 25 them; and represent them in all proceedings or actions of any kind which
 26 may be brought for or against them in any court of this State; and
 27 shall likewise interpret all statutes and legal documents, inspect and approve
 28 contracts and titles and otherwise control their legal activities.

29 f. Render aid in the prosecution of the criminal business of any county
 30 at the written request of the county prosecutor; prosecute the criminal busi-
 31 ness of the State in a county having no county prosecutor; attend for the trial
 32 of homicide cases and other high crimes and misdemeanors, or for the prose-
 33 cution of the criminal business of the State, in any county, on the written
 34 request of an assignment judge of the Superior Court or of the board of
 35 chosen freeholders of the county; and attend for the prosecution of a specific
 36 investigation or of a particular criminal case in any county on the written
 37 request of the Governor.

38 g. Attend generally to all legal matters in which the State or any officer,
 39 department, board, body, commission or instrumentality of the State Gov-
 40 ernment is a party or in which its rights or interests are involved;

41 h. Enforce the provisions of the Constitution and all other laws of the
 42 State, as well as perform all of the duties conferred and imposed by law upon
 43 the Attorney-General.

1 22. Section five of chapter twenty of the laws of one thousand nine
 2 hundred and forty-four is amended to read as follows:

3 5. Whenever the Attorney-General, personally or by his deputies or as-
 4 sistants, shall attend in any county where there is no county prosecutor, or
 5 at the request of the Governor or of an assignment judge of the Superior
 6 Court or of the board of chosen freeholders or of the county prosecutor
 7 of the county, for the prosecution of the criminal business of the State in
 8 said county or of such part thereof as shall be designated in, or as shall
 9 fall within the general purview of the matters designated in, the written
 10 request therefor, the Attorney-General and his deputies or assistants shall

11 have all the power and authority of the county prosecutor for prosecuting
12 the criminal business of the State or such part thereof, including the inves-
13 tigation of alleged crimes and misdemeanors, the attendance before the
14 criminal courts and grand juries of the county, the preparation and trial
15 of indictments for crimes and misdemeanors and the representation of the
16 State in all proceedings in criminal cases on appeal or otherwise in the
17 courts of this State.

18 Whenever the Attorney-General shall have taken over the duties of a
19 county prosecutor, he shall have all of the authority conferred by law upon
20 the prosecutor, and he may appoint such temporary assistants as he may
21 deem necessary, and shall also have power to appoint such aids, investiga-
22 tors or other personnel and clerical assistants as he shall deem necessary.

23 Whenever the criminal business or any part of the criminal business of
24 any county is prosecuted by the Attorney-General, personally or by his dep-
25 uties or assistants, there shall be paid, by the treasurer of the county, such
26 sum for that special service as the assignment judge of the Superior Court
27 of the county or a judge of the County Court of said county shall
28 certify and fix, on the application of the Attorney-General; *provided*, that
29 the compensation allowed shall not exceed that provided by law for the pay-
30 ment of the county prosecutor in said county for the same or similar serv-
31 ices; *provided, however*, that no compensation so allowed shall affect the
32 salary of the county prosecutor or assistant prosecutors if any in said county. ✓

33 In prosecuting such criminal business, the Attorney-General shall have
34 power to employ such investigators, clerical and other assistants and to
35 incur such expenses as he shall determine, and the cost thereof, including the
36 compensation allowed as aforesaid of any deputy or assistant attorneys-
37 general who shall be employed or designated by the Attorney-General for
38 that special purpose in addition to those regularly employed in the Divi-
39 sion of Law, shall likewise be paid by the treasurer of the county when cer-
40 tified and fixed in the same manner.

Supreme Court of New Jersey

DOCKET No. 2245

H. RUSSELL MORSS, JR., Union County Prosecutor,
*Plaintiff-Appellant
and Cross-Respondent,*

vs.

MALCOLM S. FORBES, DONAL C. FOX, FRANK
W. SHERSHIN, DOMINICK A. CUNDARI, PAUL
M. SALSBURG and JOSEPH W. THURING, individ-
ually and as members of the Legislature of the State of
New Jersey and as Members of the "Joint Legislative Com-
mittee To Study Wire Tapping And The Unauthorized Re-
cording of Speech",

*Defendants-Respondents
and Cross-Appellants.*

Civil Action
On Cross-Appeals
from Order
Granting
Interlocutory
Injunction of the
Superior Court
of New Jersey,
Chancery
Division—
Mercer County

Sat Below:
Schettino, J.S.C.
(Leave to Appeal
Granted)

SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANT AND CROSS-RESPONDENT, H. RUSSELL MORSS, JR.

GROVER C. RICHMAN, JR.,
Attorney General of New Jersey,
*Attorney for Plaintiff-Appellant and Cross-
Respondent,*
State House Annex,
Trenton, New Jersey.

DAVID M. SATZ, JR.,
Deputy Attorney General,
DAVID D. FURMAN,
Deputy Attorney General,
Of Counsel and on the Brief,
State House Annex,
Trenton, New Jersey.

Introduction

This brief is in response to certain questions propounded by this Court by letter dated January 10, 1957 from the Clerk of the Supreme Court. These are as follows:

“The Court desires briefs and argument on the question of the power and responsibility of the Attorney General as head of the Department of Law and Public Safety with relation to the twenty-one prosecutors, and especially with relation to the privilege asserted in the pending case. 10

In answering this question we wish to have counsel consider the problem in the light of Article V Section I, paragraph 1, of the Constitution of 1947 (and this question in turn should be considered in the light of the interpretation of similar provisions in other state constitutions) and especially with respect to the privilege asserted in the pending case.” 20

Reference is made in the above questions to the privilege asserted in the pending case. The plaintiff asserts a constitutional right to withhold law enforcement records held by him as county prosecutor.

The following material is divided into 3 sections. In our first we discuss the relationship between the Attorney General, as head of the Department of Law & Public Safety, and the 21 County Prosecutors. In the second point, consideration is given to Art. V, Sec. I, Par. 1 of the Constitution of 1947, as it relates to the power of the Governor over the 21 County Prosecutors, to similar constitutional provisions in other states, and to judicial decisions construing such provisions. 30

Finally, conclusions are drawn relating to the respective powers of the Governor, the Attorney General and the County Prosecutor in the area of law enforcement, with special attention being given to the privilege asserted by the plaintiff in this case. 40

POINT I

The relationship between the Attorney General, as head of the Department of Law and Public Safety, and the County Prosecutors.

10 In order to delineate the relationship between the offices of the Attorney General and the 21 County Prosecutors, it is necessary to examine their respective rights, powers, duties and responsibilities as set forth in the Constitution, statutes and judicial decisions. This can best be done by first examining their present-day relationship as defined by the Constitution of 1947 and statutes and then showing the historical development of both offices as they relate to present-day operations.

20 Under the Constitution of 1947, both the Attorney General and the County Prosecutor are constitutional officers. Art. V, Sec. IV, Par. 3 provides that the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor. The county prosecutors, pursuant to Art. VII, Sec. 2, Par. 1, are also nominated and appointed by the Governor with the advice and consent of the Senate, for terms of 5 years or until the appointment and qualification of their successors. These constitutional provisions fail to furnish any guide or standard respecting the nature of the powers, rights, duties, and responsibilities of either officer (*Winne v. Bergen County*, 30 21 N. J. 311, 316 (1956)).

The Attorney General presently functions as head of the Department of Law & Public Safety pursuant to the Reorganization Act of 1948 (P.L. 1948, c. 439; N.J.S.A. 52:17B-1 *et seq.*). This legislation was enacted in accordance with the standards prescribed by Art. V, Sec. 4, Pars. 1 and 2 of the Constitution, which limit executive offices, departments and instrumentalities in state government to 40 principal departments that are classified according to their

major purposes of operation. Thus, the Attorney General continued to be vested with the power specifically imposed upon him as the head of the Department of Law established in 1944 (P.L. 1944, c. 20; N.J.S.A. 52:17A-1 *et seq.*) and in addition thereto, became the supervisor and head of the Division of Law, formerly the Department of Law (N.J.S.A. 52:17B-3 and 5); the Division of State Police (N.J.S.A. 52:17B-3 and 6); the Division of Alcoholic Beverage Control, formerly the Department of Alcoholic Beverage Control (N.J.S.A. 52:17B-3 and 15); the Division of Motor Vehicles, formerly the Department of Motor Vehicles (N.J.S.A. 52:17B-3 and 19); the Division of Weights & Measures, formerly the Department of Weights & Measures (N.J.S.A. 52:17B-3 and 23); and the Division of Professional Boards, formerly made up respectively of the State Board of Public Accountants, the State Board of Architects, the State Board of Registration and Examination in Dentistry, the State Board of Embalmers and Funeral Directors, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the State Board of Nursing, the State Board of Optometrists, the State Board of Pharmacy, the State Board of Veterinary Medical Examiners and the State Board of Shorthand Reporting (N.J.S.A. 52:17B-3 and 29). 10 20

The Attorney General, as head of the Department of Law & Public Safety, thereby assumed responsibility to organize, supervise and maintain the operation of several separate governmental units with jurisdiction embracing both criminal and civil matters. 30

The Attorney General as the former head of the Department of Law continued to exercise the powers of that office pursuant to the specific terms of the Reorganization Act of 1948 (P.L. 1948, c. 439; N.J.S.A. 52:17B-5). The Department of Law was established in 1944 in order to:

“ * * * accomplish economy and efficiency by centralizing, in one department, the facilities afforded by 40

the State for the rendering of legal services to the Governor and to all officers, departments, boards, bodies, commissions and instrumentalities of the State Government and *to provide for the enforcement of the criminal law of the State by such department where the ends of justice so require.*" (Emphasis supplied; N.J.S.A. 52:17A-1.)

10 The Attorney General's powers under the 1944 Act, both civil and criminal, are enumerated in full. N.J.S.A. 52:17A-4 states that:

"The powers and duties of the Division of Law shall be the powers and duties now or hereafter conferred upon or required of the Attorney-General, either by the Constitution or by the common and statutory law of the State, and as specifically but not exclusively as detailed herein, to wit:

20 a. Be present at the seat of the government during the sessions of the Legislature;

b. Give to the Governor, to the members of the Senate and the General Assembly, and to all other officers, departments, boards, bodies, commissions and instrumentalities of the State Government, legal advice on such matters as they may from time to time require.

30 c. Examine and decide all legal matters submitted to him by the Governor or the Legislature and act for them in any matter in which they may be interested, and shall exclusively attend to and control all litigation and controversies to which the State is a party or in which its rights and interests are involved.

d. Carry out and enforce the provisions of the New Jersey Securities Law; also the Civil Rights Law.

40 e. Act as the sole legal adviser, attorney or counsel, notwithstanding the provisions of any other law, for all other officers, departments, boards, bodies, com-

missions and instrumentalities of the State Government in all matters other than those requiring the performance of administrative functions entailing the enforcement, prosecution and hearing of issues as imposed by law upon them; and represent them in all proceedings or actions of any kind which may be brought for or against them in any court of this State; and shall likewise interpret all statutes and legal documents, inspect and approve contracts and titles and otherwise control their legal activities. 10

f. Render aid in the prosecution of the criminal business of any county at the written request of the county prosecutor; prosecute the criminal business of the State in a county having no county prosecutor; attend for the trial of homicide cases and other high crimes and misdemeanors, or for the prosecution of the criminal business of the State, in any county, on the written request of an assignment judge of the Superior Court or of the board of chosen freeholders of the county; and attend for the prosecution of a specific investigation or of a particular criminal case in any county on the written request of the Governor. 20

g. Attend generally to all legal matters in which the State or any officer, department, board, body, commission or instrumentality of the State Government is a party or in which its rights or interests are involved; 30

h. Enforce the provisions of the Constitution and all other laws of the State, as well as perform all of the duties conferred and imposed by law upon the Attorney-General." 40

Emphasis must be given to N.J.S.A. 52:17A-4 (f). There, the Attorney General is empowered to render aid in the prosecution of the criminal business of any county under certain specified conditions, namely: (1) at the written request of the county prosecutor, (2) where there is no county prosecutor, (3) in trial of homicide cases or other 40

high crimes or misdemeanors or for the prosecution of the criminal business of the State on the written request of an assignment judge of the Superior Court or of the Board of Chosen Freeholders of any county, and (4) attend to the prosecution of a specific investigation or of a particular criminal case in any county on the written request of the Governor. In conjunction with this statutory power to render aid in the criminal business of a county, N.J.S.A. 52:17A-5 is pertinent.

“Whenever the Attorney-General, personally or by his deputies or assistants, shall attend in any county where there is no county prosecutor, or at the request of the Governor or of an assignment judge of the Superior Court or of the board of chosen freeholders or of the county prosecutor of the county, for the prosecution of the criminal business of the State in said county or of such part thereof as shall be designated in, or as shall fall within the general purview of the matters designated in, the written request therefor, the Attorney-General and his deputies or assistants shall have all the power and authority of the county prosecutor for prosecuting the criminal business of the State or such part thereof, including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand juries of the county, the preparation and trial of indictments for crimes and misdemeanors and the representation of the State in all proceedings in criminal cases on appeal or otherwise in the courts of this State.

Whenever the Attorney-General shall have taken over the duties of a county prosecutor, he shall have all of the authority conferred by law upon the prosecutor, and he may appoint such temporary assistants as he may deem necessary, and shall also have power to appoint such aids, investigators or other personnel and clerical assistants as he shall deem necessary.

Whenever the criminal business or any part of the criminal business of any county is prosecuted by the

Attorney-General personally or by his deputies or assistants, there shall be paid, by the treasurer of the county, such sum for that special service as the assignment judge of the Superior Court of the county or a judge of the County Court of said county shall certify and fix, on the application of the Attorney-General; *provided*, that the compensation allowed shall not exceed that provided by law for the payment of the county prosecutor in said county for the same or similar services; *provided*, however, that no compensation so allowed shall affect the salary of the county prosecutor or assistant prosecutors if any in said county.

In prosecuting such criminal business, the Attorney-General shall have power to employ such investigators, clerical and other assistants and to incur such expenses as he shall determine, and the cost thereof, including the compensation allowed as aforesaid of any deputy or assistant attorneys-general who shall be employed or designated by the Attorney-General for that special purpose in addition to those regularly employed in the Division of Law, shall likewise be paid by the treasurer of the county when certified and fixed in the same manner.”

This section delineates the power and authority of the Attorney General when he assumes the role of the county prosecutor upon the happening of one of the conditions expressed in N.J.S.A. 52:17A-4(f).

Not only may the Attorney General render aid in the criminal business of the State under the conditions outlined above, through the county prosecutor, he may, as the head of the Department of Law & Public Safety, control the Division of State Police (N.J.S.A. 52:17B-4; R.S. 53:1-1 *et seq.*). This arm of the Department of Law & Public Safety possesses broad powers. R.S. 53:2-1 states that:

“The members of the State Police shall be subject to the call of the Governor. They shall be peace officers

of the State, shall primarily be employed in furnishing adequate police protection to the inhabitants of rural sections, shall give first aid to the injured and succor the helpless, and shall have in general the same powers and authority as are conferred by law upon police officers and constables.

10 They shall have power to prevent crime, to pursue and apprehend offenders and to obtain legal evidence necessary to insure the conviction of such offenders in the courts. They shall have power to execute any lawful warrant or order of arrest issued against any person, and to make arrests without warrant for violations of the law committed in their presence, and for felonies committed the same as are or may be authorized by law for other peace officers.

20 They may cooperate with any other State department, or any State or local authority in detecting crime, apprehending criminals and preserving law and order; but the State Police shall not be used as a posse in any municipality except upon order of the Governor when requested by the governing body of such municipality; *provided, however*, that the Superintendent of State Police, or the person in charge thereof, shall, upon request made to him by the superintendent of elections of any county of this State, assign for use on any election day officers and troopers, not to exceed fifteen in number in any one county, to aid such superintendents of elections in the enforcement of the election laws of this State.

30 They may act as inspectors of motor vehicles and as wardens in the protection of the forests, and the fish and game of the State."

In addition to the powers already set forth, the Attorney General, together with other state and county officials, may exercise some control over local criminal matters pursuant to statutory authority. N.J.S.A. 2A:152-12 states that:

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"Whenever the mayor or other chief executive, or the chief of police or other head officer of police, of any municipality, shall be notified by a written communication delivered to him personally, signed by the governor or attorney general, or by a judge of the superior court or county court, or the prosecutor of the county in which the municipality is situate, stating that it is alleged, and that there is reason to believe it to be true, that there exists in 1 or more places in such municipality, designated in the communication, open, continued or notorious violation of any 1 or more sections of subtitle 10 of this title (§2A:85-1 et seq.), which section or sections shall be stated in such communication, by any person occupying or carrying on business in such place or places, whether such person be known or unknown, the mayor or other chief executive or the chief of police or other head police officer so notified shall take immediate, proper and efficient measures, by complaint and arrest or by raid and arrest or otherwise, to prevent the further continuance of such illegal practices and to bring any person so alleged to be offending to justice."

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The county prosecutor performs his statutory duties pursuant generally to N.J.S. 2A:158-1 *et seq.* The authority conferred upon him is contained in N.J.S. 2A:158-4 and 2A-158-5. N.J.S. 2A:158-4 provides that:

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"The criminal business of the State shall be prosecuted exclusively by the prosecutors, except in counties where, for the time being, there may be no prosecutor, or where the prosecutor desires the aid of the attorney general, or as otherwise provided by law."

N.J.S. 2A:158-5 provides that:

"Each prosecutor shall be vested with the same powers and be subject to the same penalties, within his county, as the attorney general shall by law be

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vested with or subject to, and he shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws.”

10 The above statutory outline generally describes the statutory powers and duties of the offices of the Attorney General and the County Prosecutor. The question arises as to whether, by judicial decision or otherwise, there are additional duties which presently devolve upon the Attorney General or the County Prosecutor and, if so, how they are related to each other.

20 It has already been noted that the Constitution of 1947 is limited insofar as it relates to the powers, functions and duties of each office. All that is indicated are the offices, the methods of appointment and terms. The same was true of the Constitution of 1844 in which both officers were mentioned, and in the Constitution of 1776 which provides for the office of the Attorney General only (*Public Utility Commission v. Lehigh Valley R.R.*, 106 N. J. L. 411 (E. & A. 1930)). Article XXII of the Constitution of 1776 stated that: “that the common law of England as well as so much of the statute law as have heretofore been practiced in this Colony, shall still remain in force until they shall be altered by a future law of the Legislature * * *”. While the office of the Attorney General was provided for in the Constitution of 1776, many authorities in this state have 30 recognized that his powers and duties were those which the Attorney General had at common law both in England and in the Colony of New Jersey.

40 The Attorney General at common law was the chief legal representative of the Crown and his power in that position was almost unlimited. This principle has long been recognized by our Courts (*Public Utility Commission v. Lehigh Valley Railroad, supra*; *State v. Zabriskie*, 43 N. J. L. 369, 372 (Sup. Ct. 1881), rev’d on other grds., 43 N. J. L. 640 (E. & A. 1881); *Van Riper v. Jenkins*, 140 N. J. Eq. 99, 101 (E. & A. 1946)). But, as was stated

in *State v. Winne*, 12 N. J. 152 (1953), at p. 164, the prosecution of crime was historically a private matter. Thus, as a matter of practicality, the Attorney General representing the Crown did not exercise his powers in criminal cases except under unusual circumstances (see *Jackson, The Machinery of Justice in England*, 2d Ed. (1953); Chapter III, *Criminal Jurisdiction*, sec. 3, *The Process of Prosecution*, pp. 106-118; *People v. Miner*, 2 Lans. 396, 398 (N. Y. Sup. Ct. 1868); Book IV, *Blackstone’s Commentaries*, 3rd Ed., pp. 245, et seq., Chapter XXIII of the *Several Modes of Prosecution*; *Belloit, The Origin of the Attorney General*, 25 Law Quarterly Review, 400; *W. S. Holdsworth, The Early History of the Attorney and Solicitor General*, 13 Ill. L. Rev. 602; IV *Stephen, Commentaries on the Laws of England* (14 Ed.) p. 331; *The Common Law Power of the State Attorneys-General to Supersede Local Prosecutors*, 60 Yale Law J. p. 559). In the colony of New Jersey the Attorney General exercised a broader authority in the 20 prosecution of criminal cases (see *State v. Winne, supra*, at p. 165). Independent research beyond authorities cited in the opinion of this Court bears out this contention. For instance, in 1713 the Colonial Legislature passed an act prohibiting the Attorney General from prosecuting persons other than by presentment of a grand jury or by information by a specific order of the Governor. The act provided that should this law be violated, a penalty of fifty pounds would be imposed. (13 *Ann.*, Chap. XIII; I *Nevill, Acts of the General Assembly of the Province of New Jersey*, 1703-1752, p. 27). To the same effect, see also 1 *George II*, Chap. XLIV, 1 *Id.*, p. 163. 30

Conceding that the first Attorney General of the State of New Jersey possessed and assumed considerable powers at the time of the adoption of the Constitution of 1776, we find nothing dealing with any legislation concerning his authority or office, either criminal or civil, until 1812, with the exception of a law passed in 1795 whereby the Attorney General was empowered to file an action in the nature of *quo warranto* by leave of the Supreme Court (*Paterson’s New Jersey Laws, 1703-1799*, p. 177), and an act passed 40

10 Constitution of 1776, Article XII, he was appointed for a term of 5 years by the Council and General Assembly in Joint Meeting and commissioned by the Governor. Art. VIII, Sec. II, Par. 3 of the 1844 Constitution provided that the Attorney General be appointed by the Governor with the advice and consent of the Senate for a term of 5 years. Likewise, the prosecutors, pursuant to the same provision, were appointed in the same manner for the same term as the Attorney General. (See *Proceedings of the New Jersey State Constitutional Convention of 1844* (1942), pp. 481 to 510, as to fear of delegates to allow governor, instead of Legislature to appoint state officers; also, as to right of Attorney General to appoint prosecutor, p. 389.)

20 To conform with this constitutional provision on appointments, the Legislature in 1846 repealed P.L. 1822, p. 25 (Rev. 1846, p. 687, Par. 202) and P.L. 1823, p. 52 (Rev. 1846, p. 688, Par. 215), and provided, in the Revised Statutes of 1846, page 832, that:

30 “ * * * there shall be appointed for each county some fit person, who shall be an attorney and counsellor at law, whose duty it shall be to prosecute the pleas of the state in such county, in the absence of the attorney general: *and further*, to do and perform such acts and things in behalf of the state, in and about such prosecutions, as the attorney general might or ought to do, if personally present.

* * *

That the said prosecutors shall, severally, during the continuance of their appointments, be vested with the same powers, subject to the same penalties, and entitled to the same fees for services, in the absence of the attorney general, within their respective counties, as the attorney general is or shall by law be vested with, or subject or entitled to.

40 That in case of the absence of the attorney general and of the prosecutor as aforesaid, at any term of the court of oyer and terminer and general jail delivery,

or general quarter sessions of the peace, in any county, it shall be lawful for such court to appoint some fit person to prosecute the pleas of the state during said term; who, on taking the oath or affirmation above prescribed, shall be vested, during the said term, with the powers of a prosecutor of the pleas, and be entitled to the same fees and subject to the same penalties.”

This codification essentially formed the basis of the present Prosecutors Act, N.J.S. 2A:158-1 *et seq.* Section 3 of the 1812 Act was also repealed by the revision of 1846, p. 681, Par. 104, but incorporated into the above quoted enactment.

From the unambiguous language of these enactments, there is noted a gradual modification of the common law functions of the Attorney General. True, he still had the authority to prosecute the pleas of any county if he so wished. But, the Legislature, first to aid him, and then to supplement his authority in the county, created the office of the prosecutor, not only to act in the Attorney General's absence, but to do what the Attorney General “might or ought to do” if he were personally present. This is significant; the Legislature recognized the prosecutor as being independent and not subject to act only on order of the Attorney General.

In 1854, the Legislature enacted a law which had important bearing on both the Attorney General and the county prosecutor. While the Attorney General had formerly exercised general civil and criminal powers that had devolved upon him by Common Law and several statutory enactments, P.L. 1854, c. 58 was the first act which specifically defined his powers and duties and fixed his salary. Section 1 of this Act stated in part that:

“ * * * it shall be the duty of the attorney general, when not incompatible with his other public duties, to be present at the seat of government during the session of the legislature, to give to the members of the Senate and Assembly, and to the Executive, and all

10 the officers of the state government, such legal information as they may from time to time request, examine and decide all cases submitted for his opinion by the state superintendent of common schools, attend in any county of the state for the trial of homicide cases, or other high crimes, on the written request of a justice of the supreme court, or of the board of chosen freeholders of any county, upon all applications for loans of the school fund, to inspect the title papers and determine the security offered, and attend generally to all matters in which the state is a party, or in which its rights and interests are involved * * *

Also of significance is the appearance, for the first time in another part of this Act, of the mandatory language stating that the criminal business of the State shall be prosecuted exclusively by the county prosecutor except under limited circumstances. Section 3 of the Act states:

20 “ * * * That after the passage of this act the criminal business of the state shall be prosecuted exclusively by the prosecutors of the pleas, except in counties where, for the time being, there may be no prosecutor, or where the prosecutor desires the aid of the attorney general; and when the attorney general prosecutes in a county having no prosecutor, he shall be entitled to the fees now fixed by law; and where he aids in the prosecution at the request of the prosecutor, he shall be entitled to one half of the fees; and

30 when the attorney general attends the trial of any case at the request of a justice of the supreme court, or of the board of freeholders, as provided in the first section of this act, he shall be paid such sum for that special service as the justice of the supreme court of that judicial district shall certify and fix, to be paid by the collector of the county in which the cause is tried.”

40 Prior to this time, statutes gradually authorized prosecutors to exercise increased power. At the same time, the

Legislature neither limited or expanded the powers of the Attorney General, especially when dealing with matters of criminal prosecution. Here, however, the 1854 Act limits the Attorney General to carrying out the criminal business in a county in four instances; (1) in homicide cases, or other high crimes on the written request of a justice of the Supreme Court, or (2) the board of freeholders, (3) to attend to the general criminal business in the county where there was no county prosecutor, or (4) where the county prosecutor desired his aid (compare cases cited *infra*). 10

Essentially, P.L. 1854, c. 58 formed the basis for those powers and duties presently conferred and imposed upon the Attorney General as head of the Division of Law (N.J.S.A. 52:17-4 and 5; N.J.S.A. 52:17B-5).

After 1854, the power of the Attorney General to attend to criminal business was broadened in two instances. In 1911, P.L. 1911, c. 184, the Legislature supplemented P.L. 1854, c. 58 to authorize a justice of the Supreme Court to request the Attorney General, personally or through an assistant, to attend in any county for prosecuting the criminal business of the State, 20

“ * * * including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand juries of the county, the preparation of indictments and the trial of indictments for crimes and misdemeanors, and upon the like request to represent the State in proceedings on error in criminal cases in the Supreme Court and Court of Errors and Appeals.” 30

This Act became parts of N.J.S.A. 52:17A-4(f), 5 and N.J.S. 2A:158-14.

While the courts and county authorities could request the Attorney General to attend to the criminal business generally, it was not until 1944 that the Legislature authorized the Governor to request the Attorney General to 40

encroach upon the area of criminal business usually exclusively reserved to the prosecutors; and then in limited instances only. The Department of Law Act, P.L. 1944, c. 20 (N.J.S.A. 52:17A-1, *et seq.*) did empower the Governor to request the Attorney General " * * * to attend for the prosecution of a *specific investigation* or of a particular criminal case * * * " (See *Report of the New Jersey Commission on State Administrative Reorganization* (1944), Part I).

From the above outlined statutory evolution of the offices of the Attorney General, it may be advanced that the historical development strongly indicates that the jurisdiction of the county prosecutor has been carved-out of the office of the Attorney General as it once existed. Judicial authority bulwarks this contention.

In *State ex rel. Clawson v. Thompson*, 20 N. J. L. 689 (Sup. Ct. 1846), the Court interpreted the 1823 statute (P.L. 1823, p. 52) that provided that county prosecutors be appointed by joint meeting of the Legislative Council and General Assembly when the Attorney General was unable to attend to the criminal business of a particular county. In this case, the prosecutor had been elevated to the position of the Attorney General and continued to carry out the responsibilities of the prosecutor. It was contended that the offices were incompatible and could not be held by the same man. The Court stated at p. 691 that:

" * * * From the tenor of this act, it is manifest that the legislature intended, that besides the office of Attorney General, whose right to prosecute the pleas extended to every county, there should be a prosecutor for each county; but that the latter officer was not to interfere, either with the right or duty of the Attorney General to prosecute, when he was personally present.

"I take the true construction of this act to be, that the prosecution of the criminal pleas in the several counties shall be conducted by, and in the name of the

Attorney General, when he is personally present, and not by the prosecutors. Although the latter are not the deputies of the Attorney General, as they do not derive their appointments or authority from him, nor are they accountable to him for the faithful performance of their duties, nor removable at his will; yet his official duties are the same, as of deputies appointed under the act of 1812; and in the exercise of those duties and the enjoyment of the emoluments of their office, they are under the control of the Attorney General, whenever it is his pleasure to attend in person. The office of Prosecutor then is a subordinate office to that of Attorney General; and its exercise to a certain extent under his control; and it cannot therefore exist with the other, in the same person at the same time. If it were so, it would defeat the design of the legislature; who clearly intended, that in addition to the services of the Attorney General, as occasion might require, each county should be entitled to the services of a public prosecutor."

The Court then went on to hold that the offices were incompatible and could not be held by the same person. It must be emphasized from the above language that prosecutors are only responsible to the Attorney General when he attends to criminal business in the county. This determination becomes more important when the two offices are considered in the light of the present statutory scheme (*cf. Winne v. Bergen County, supra*).

In *State v. Zabriskie*, 43 N. J. L. 369 (Sup. Ct. 1881), *rev'd on other grds.* 43 N. J. L. 640 (E. & A. 1881), the question arose as to whether, after a verdict had been rendered in a criminal case, the prosecutor could remove, by way of Certiorari, a criminal record to an appellate court. The Court held that the prosecutor could remove such a record to an appellate tribunal because, as a representative of the Attorney General, by statute, he performed duties and had rights similar to those of the Attorney General in England.

To the same effect is *State v. New Jersey Jockey Club*, 52 N. J. L. 493 (Sup. Ct. 1890). In this case, the county prosecutor applied for a writ of certiorari to move an indictment into the Supreme Court. The Court stated that the act empowering the county prosecutor to exclusively prosecute the criminal business of the state, except under certain statutory conditions (presently N.J.S. 2A:158-4):

10 “* * * relieves the attorney general, and imposes upon the county prosecutor all the duties which the attorney general previously performed in the prosecution of indictments in such county.

 We are of the opinion that the right to apply for the writ is the right of the prosecutor, and not of the attorney general. * * *” (at p. 494)

20 This case represents the first determination of the meaning of the terms giving the authority to the county prosecutor to be the exclusive person in the county to prosecute criminal business. The conclusion is clear that the Attorney General, except when there is no county prosecutor or when he was ordered to attend criminal business of the county by the Court, was excluded from acting under his powers that were derived from the common law of the Attorney General of England.

30 In *State ex rel. O'Reardon v. Wilson*, 4 N. J. Misc. 1008 (Sup. Ct. 1926), aff'd 104 N. J. L. 181 (E. & A. 1927), a Supreme Court Justice had requested the Attorney General to investigate and prosecute the criminal business in Morris County. The Attorney General, pursuant to this request, superseded the then county prosecutor and appointed a deputy in his stead. The Court, considering the right of the Attorney General to supersede the prosecutor in all respects and to incur expenses of that office, stated that by statute (P.L. 1911, p. 325, as amended P.L. 1922, c. 1) the Court had the right to request the attendance of the Attorney General in the county for the prosecution of criminal business and the Attorney General, in turn, could

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supersede the prosecutor. Therefore, the Court held that the superseded county prosecutor was without authority to act in the performance of the duties and that the employee could not seek expenses from him or this Court. The only recourse the employee had was to take up the matter with the Attorney General who in due course, without court intrusion, could determine whether the request was fair and just. This case indicates that when a county prosecutor is superseded, the Attorney General steps into his shoes to the extent of having exclusive jurisdiction over all criminal matters in the county.

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A case of extreme historical importance as to the relationship of the Attorney General and other state instrumentalities is *Public Utility Commrs. v. Lehigh Valley R.R. Co.*, 106 N. J. L. 411 (E. & A. 1930); a suit brought by the Public Utility Commission through its own appointed counsel to enforce a statutory penalty for non-compliance with an order of the Commission. The defendants challenged the right of the special counsel to commence the suit, contending that such an action should have been brought by the Attorney General. The counsel was appointed by the Commission pursuant to a statute. After fully reviewing the history of both statutory and judicial development of the office of the Attorney General and, likewise, the county prosecutor, the Court held that although the Attorney General was a constitutional officer, his rights and duties in both civil and criminal matters were subject to the power of the legislature. Therefore, the legislature had a right to delegate to the Public Utility Commission the power to sue in the name of the State for a penalty and to entrust the conduct of the suit to counsel appointed pursuant to the statute. This case is particularly pertinent because of the holding that even though the Attorney General had an absolute power in common law England as the chief law officer of the Crown to exercise the criminal and other state business in the name of the Crown, and the Attorney General in the Crown colony

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of New Jersey had a similar power, the office was subject to legislative fiat insofar as his rights, powers, responsibilities and duties were concerned. He no longer possessed the exclusive common law power to be the chief law officer of the state; his powers were subject to modification or repeal by statute.

10 *State v. McFeeley*, 136 N. J. L. 102 (Sup. Ct. 1947) considered the question as to whether the Attorney General, performing the duties of the Hudson County Prosecutor because the latter no longer held office (P.L. 1944, c. 20; N.J.S.A. 52:17A-5), could validly exercise the powers of the county prosecutor. The Court held that when the Attorney General exercised the powers of the county prosecutor he did not hold two incompatible offices but rather, as the Attorney General, performed the duties of the Prosecutor that were imposed upon him by statute when there was no prosecutor. This determination strengthens the contention that the legislature still recognized the Attorney General as the representative of the state in the prosecution of offenses and, subject to legislative authority, he could exercise the powers he originally had, such as that of enforcing the criminal laws by criminal prosecutions in any county in which there was a vacancy in the office of county prosecutor.

30 In *State v. Longo*, 136 N. J. L. 589 (E. & A. 1947, an assistant prosecutor had been found guilty by a trial court of perpetrating a fraud upon the court and jury during the course of a criminal prosecution. Subsequently, the assistant prosecutor, together with the prosecutor, went out of office, and the Attorney General, because of the vacancy (N.J.S.A. 52:17A-5) had taken over the prosecutor's duties. While the Attorney General acted as county prosecutor an application for a new trial was made. The assistant prosecutor testified at the hearing on the motion, and after a new trial had been granted, the assistant prosecutor attempted, in his individual capacity, to remove the record of the trial court by way of *certiorari*, to review

the order of new trial. The Court of Errors and Appeals, in reviewing the position of the Attorney General and the prosecutor, rejected an assertion that a private individual had a right to have a court interfere with the function of the criminal business of this state which, by statute is done exclusively by the county prosecutor, or the Attorney General under certain conditions. The Court stated at p. 592 that:

“The Attorney-General and the several prosecutors of the pleas are constitutional officers (article 7, section 2, paragraph 3). Their duties are not defined by the constitution but are left, by necessary implication, for definition by the legislature. *Public Utility Commissioners v. Lehigh Valley Railroad Co.*, 106 N. J. L. 411; *O'Reardon v. Wilson*, 4 N. J. Mis. R. 1008, 1011. A prosecutor of the pleas is empowered by statute (R.S. 2:182-1), except as otherwise provided by law, to prosecute the pleas of the state in his county and to do and perform such acts and things in behalf of the state in and about such prosecution as were formerly done and performed by the Attorney-General; and (R.S. 2:182-4) ‘the criminal business of the state shall be prosecuted exclusively by the prosecutors of the pleas, except in counties where, for the time being, there may be no prosecutor, or where the prosecutor desires the aid of the attorney-general or as otherwise provided by law.’ The Attorney-General, among his other duties, is empowered (R.S. 52:17A-4(b), chapter 20, Pamph. L 1944) to prosecute the criminal business of the state in a county having no prosecutor or render aid in a prosecution at the request of the prosecutor and may be called upon by a Justice of the Supreme Court to prosecute the criminal business of the state therein, and to represent the state in proceedings on error in criminal cases in the Supreme Court and the Court of Errors and Appeals, and (R.S. 52:17A-5) in functioning in a county shall have *all the power and*

*authority of the prosecutor including the representing of the state in all proceedings in criminal cases, on error or otherwise, in the Supreme Court and the Court of Errors and Appeals. * * **

* * *

10 "Thus, by statute, a county prosecutor is, within his county, the person who is to do such acts and things in behalf of the state as were formerly done by the Attorney-General; and specifically he, exclusively, shall prosecute the criminal business of the state except in those instances where the Attorney-General is called upon to act and in such instances the Attorney-General, because he is given *all* the power and authority of the prosecutor, including the representing of the state in all proceedings in criminal cases, on error or otherwise, in the Supreme Court and the Court of Errors and Appeals, has the exclusive authority so to act.

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It is not open to question that what we are now concerned with is criminal business. The statute, in so far as it can do so, places the exclusive function of administering that business as we have said. It has full power to do so unless there is conflicting constitutional authority elsewhere."

The Court further held at p. 594 that:

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"* * * The Supreme Court has, constitutionally, the ancient powers of the King's Bench unless the same have been taken away or delegated elsewhere; but we are without supporting authorities on the proposition that the Supreme Court, by reason of succeeding to the jurisdiction of the King's Bench, holds the power of removing or supplanting a Prosecutor of the Pleas or the Attorney-General. And, because of the theory of the English people that enforcement of the criminal laws lay with the Crown, we doubt the existence of any common law jurisdiction in the King's Bench to oust

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the officers of the Crown by placing the control of criminal business, or any part of it, in a private person. *Vide Black. Com. Book IV, p. 2; Book I, p. 268; Book III, p. 28*—"the King's attorney general;" *State v. Zabriskie*, 43 N. J. L. 369; *Public Utility Commissioners v. Lehigh Valley Railroad Co., supra.*"

And, at page 596, that:

"* * * We find that the Supreme Court did not have jurisdiction to take, in that manner, the criminal business of the state away from the Prosecutor of the Pleas, or, in his stead, from the Attorney-General, and to place it in the hands of a private citizen. In any event, it was an imprudent exercise of discretion to award the writ to one whose acts as a public officer had been adjudged fraudulent and constituted the nub of the controversy."

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These cases, representing a complete examination of judicial rulings in this state on the extent of the powers of the Attorney General and the county prosecutor as they relate to each other, are convincing. There exists a positive declaration that, under separate factual circumstances, although at Common Law the Attorney General did in fact possess a broad power over criminal matters, his powers and duties were, and are now, subject to the power of the Legislature. Such being the case, the Legislature may empower the prosecutor, a constitutional officer with powers and duties that occupy a field of jurisdiction formerly held by the Attorney General even to the point of vesting authority in the Prosecutor to conduct the criminal business of the state in his county to the exclusion of the Attorney General.

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While we have dealt generally with the powers of the Attorney General and the prosecutor to attend to the criminal business of the State and have seen the gradual strengthening of the prosecutor's jurisdiction, we have left

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for discussion at this time another distinct duty of the prosecutor which at no time had been imposed as a statutory duty upon the Attorney General. This is the duty imposed upon the prosecutor not only to *prosecute* the criminal business in the county for the State, but also to use all reasonable diligence for the *detection and arrest* of offenders against the law. N.J.S. 2A:158-5, to repeat, states that:

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“Each prosecutor shall be vested with the same powers and be subject to the same penalties, within his county, as the attorney general shall by law be vested with or subject to, and he shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws.”

20 This particular duty originated in the Revision of 1874 as part of the criminal procedure section of the Revised Statutes passed by the Legislature at that time. A review of the common law and, in turn, New Jersey judicial authorities reveals little or nothing respecting the duty to detect crime and arrest offenders as a distinct function of either the Attorney General or the county prosecutor.

30 Regarding the statutes as well as *State v. Winne*, 12 N. J. 152 (1953), there are several independent and unrelated offices which ~~are~~ still have common law or statutory powers to perform such functions. Thus, in *State v. Winne*, *supra*, this Court recognized the common law power of the sheriff to exercise broad authority in the field of law enforcement even though he is not given any right to incur, by statute, expenses the way a county prosecutor does. There is nothing in our statutes respecting the duties and functions of the county sheriff. But, the Peace Officers Act (N.J.S. 2A:154-1) does require Judges of the Superior Court, County Court, County District Court or Juvenile and Domestic Relations Court, and Magistrates to “ * * *

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citizens and inhabitants of this State * * * ” within their respective jurisdictions and “ * * * to apprehend, and to cause to come before them and imprison and punish all persons offending against such laws * * * .” The sheriff, having been recognized as an arm of the Court and to some extent, an agent, would possess some powers of criminal jurisdiction so as to aid the above named officers who keep the peace (cf. *Virtue v. Board of Freeholders*, 67 N. J. L. 139 (Sup. Ct. 1901)).

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Recognizing that the sheriff would also, on behalf of the county which he serves, possess the power of a *posse comitatus* together with other Court and county officials, N.J.S. 2A:154-2 is revealing. This section states that:

“No sheriff or person authorized to appoint special deputy sheriffs, constables, marshalls, policemen or other peace officers in this State, for the purpose of preserving the public peace and preventing and quelling public disturbances, shall appoint as such any person who is not a qualified voter of this State.”

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Also important is an incidence of power given to court attendants. N.J.S. 2A:154-3 states that:

“All court attendants in the competitive class of civil service who have been or who may hereafter be appointed by the sheriff of any county in this state shall, by virtue of such appointment and in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law.”

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Therefore, not only is there a limitation on the authority of the Attorney General respecting his power to control a county prosecutor, since the statutes and cases say that the county prosecutor is in most respects independent of the Attorney General in dealing with matters of criminal prosecution (*State v. Longo, supra*; *State v. Wilson, supra*;

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Public Utility Commissioners v. Lehigh Valley R.R. Co., supra); there is also a statutory lack of power in the Attorney General over the county prosecutor in the area of detection of crimes and arrest of criminals.

10 But, this does not mean that the Attorney General and prosecutor have no working relationship. The Attorney General still is regarded as the chief legal officer of the State (*Wilentz v. Hendrickson*, 133 N. J. Eq. 447 (Ch. 1943), *aff'd*. 135 N. J. Eq. 244 (E. & A. 1944); *State ex rel. Clawson v. Thompson*, 20 N. J. L. 689 (Sup. Ct. 1846); *Van Riper v. Jenkins*, 140 N. J. Eq. 99 (E. & A. 1946). To this extent, the Legislature has empowered prosecutors to make annual reports to the Attorney General about the performance of their duties and operations of their offices and they are specifically required to " * * * make such other reports to the Attorney General as the Attorney General may require from time to time" (N.J.S.A. 52:17A-15). Thus, not only do prosecutors make an annual report, they make monthly general reports and quarterly reports on the gambling activities in their counties. Besides requiring regular reports, there is a constant liaison in specific investigations or cases where the Attorney General may require reports. The Attorney General, in turn, also coordinates reports on complaints received by him of matters within the prosecutor's jurisdiction, or reports that come from without the State through the Attorney General and down to the county prosecutor.

Besides serving as a coordinator with the prosecutors, the Attorney General, through cooperation, holds regular meetings to discuss mutual problems.

The Attorney General, through the State Police, aids the 21 prosecutors by supplying State Police personnel to conduct routine criminal investigations at the prosecutor's request. These assignments generally fall into 3 categories. In some instances where the county prosecutor has no personnel to assist an investigation, such as in Warren and

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Sussex Counties, all investigations are normally performed by an assigned State Police detective or investigator assigned to a station in those counties. State Police are also furnished as support to county detective forces. When there is a shortage of county detective personnel, as in Monmouth and Salem Counties, State Police act under the prosecutor in performing routine assignments.

Where there is no county prosecutor, pursuant to N.J.S.A. 52:17A-4(f) and 5, a Deputy Attorney General is empowered to act as a county prosecutor until one is appointed by the Governor with the advice and consent of the Senate.

Another instance of cooperation concerns the dismissal of old and outdated indictments by county prosecutors. This program was initiated by Chief Justice VANDERBILT. Thus, since the end of 1954, by arrangement between the Court, the prosecutors and the Attorney General, prosecutors commenced to dismiss 47,484 indictments pending as far back as 1837.

Under a different program that has been instituted, through cooperation between the Prosecutor and the Attorney General, no prosecutor can apply to a Superior Court for a dismissal of indictments that involve public officials, a member of the bar, prominent political persons or public issues unless the Attorney General gives his approval.

POINT II

The relationship between the Governor as head of the executive branch of the State government and the County Prosecutors.

The New Jersey Constitution of 1947 provides in Art. V, Sec. I, Par. 1 that: "The executive power shall be vested in a Governor." The Governor is therefore the head of the executive branch of the State government. By numerous decisions in this State, the county prosecutors are State

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