

November 27, 1963

COPY NO. 2

LEGISLATIVE NOTES ON R. S. 40:11-1.1 to 1.4

(Dual Office Holding)

Laws 1962, Chapter 173 - A-491 - Introduced February 19, 1962 by Bressler & Smith

Bill had statement.

Conditionally vetoed by Governor, November 19, 1962

Amended by Assembly, November 19, 1962

For various newspaper articles on this legislation, see vertical file:

N. J. -- Conflict of Interest

RS/jmk

COPY

DEPOSITORY COPY

Do Not Remove From Library

PROPERTY OF
NEW JERSEY STATE LIBRARY

185 W. State Street
Trenton, N. J.

ASSEMBLY, No. 491

STATE OF NEW JERSEY

INTRODUCED FEBRUARY, 19, 1962

By Assemblymen BRESSLER and SMITH

Referred to Committee on State, County and Municipal Government

AN ACT concerning counties and municipalities in relation to officers and employees and supplementing chapter 11 of Title 40 of the Revised Statutes.

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

1 1. Any person holding or who shall hold a county elective or appointive
2 office shall, during the term for which he is elected or appointed, be eligible
3 for election or appointment to any municipal office or position in any municipi-
4 pality in the county, and any person holding or who shall hold a municipal
5 elective or appointive office or position shall, during the term for which he is
6 elected or appointed be eligible for election or appointment to any county
7 elective or appointive office or position.

1 2. Any person otherwise qualified shall be eligible for election or appoint-
2 ment to any county or municipal elective or appointive office or position
3 notwithstanding his holding of a membership in either the Senate or General
4 Assembly of the State. Membership in the Legislature of the State shall not
5 be incompatible with any county or municipal elective or appointive office.

1 3. Nothing contained in this act shall be deemed to preclude a member
2 of the board of chosen freeholders of a county or a member of the governing
3 body of a municipality or a member of the Legislature from abstaining from
4 voting nor the challenge of a right to vote, on any measure predicated upon
5 an actual conflict in such measure as between a county or a municipality and

6 the Legislature or between a county and a municipality of such county,
7 where the member who is to abstain or whose vote is to be challenged, holds an
8 office in both a county and a municipality or in a county or municipality and
9 the Legislature.

1 4. This act shall be retroactive to January 1, 1959.

1 5. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to legally declare certain public civil offices to be compatible. Long custom and usage in this State has clearly indicated that the voters have not deemed certain offices to be incompatible. In many instances county and municipal office holders have been elected to the Legislature and county officers have been elected to municipal offices and vice versa. Instances of this kind include voting at the same election resulting in the election of the same person to 2 offices at the same time. A person who is elected to an office has a responsibility to the people who elected him to serve in the office to which he has been elected. Decisions of the courts in cases involving incompatibility of office have always recognized that the Legislature may declare offices compatible or incompatible, thereby taking the particular office out of the common law rules. In view of the need for clarification in this field, this act will accomplish such clarification.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 491
STATE OF NEW JERSEY

ADOPTED NOVEMBER 19, 1962

Amend page 1, title, lines 1 and 2, delete "officers and employees" and insert in lieu thereof "the dual holding of offices and positions".

Amend page 1, section 1, lines 1 to 7, delete section 1 in its entirety and insert in lieu thereof:

"1. It shall be lawful for a person to hold simultaneously an elective county office and an elective municipal office."

Amend page 1, section 2, lines 1 through 4, delete the first sentence of the section in its entirety.

Amend page 1, section 2, line 4, delete "Membership in" and insert in lieu thereof, "It shall be lawful for a member of".

Amend page 1, section 2, lines 4 and 5, delete "shall not be incompatible with any" and insert in lieu thereof, "to hold simultaneously any elective or appointive office or position in".

Amend page 1, section 2, line 5, delete "elective or appointive office" and insert in lieu thereof "government".

Amend page 1, section 3, lines 1 through 3, delete "preclude a member of the board of chosen freeholders of a county or a member of the governing body of a municipality or a member of the Legislature" and insert in lieu thereof, "prevent the incumbent of any office".

Amend page 1, section 3, line 4, following "voting" insert "in any matter in which he believes he has a conflict of duty or of interest,".

Amend page 1, section 3, line 4, delete "the" and insert in lieu thereof "to prevent a".

Amend page 1, section 3, lines 4 through 9, starting with and including “, on any measure predicated upon”, delete the remainder of the section and insert in lieu thereof, “on that account under the principles of the common law or any statute.”

Amend page 2, section 4, line 1, delete section 4 in its entirety and insert in lieu thereof:

“4. (a) Nothing herein contained shall be deemed to repeal or supersede any statute prohibiting the dual holding of offices or positions.

“(b) This act shall apply to persons now holding elective offices or positions with the counties and municipalities or now serving as members of the Legislature of the State.

“(c) For the purposes of this act the term ‘elective office’ shall mean an office to which an incumbent is elected by the vote of the general electorate.”

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 491

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 19, 1962

By Assemblymen BRESSLER and SMITH

Referred to Committee on State, County and Municipal Government

AN ACT concerning counties and municipalities in relation to [officers and employees] *the dual holding of offices and positions* and supplementing chapter 11 of Title 40 of the Revised Statutes.

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

1 [1. Any person holding or who shall hold a county elective or appointive
2 office shall, during the term for which he is elected or appointed, be eligible
3 for election or appointment to any municipal office or position in any munici-
4 pality in the county, and any person holding or who shall hold a municipal
5 elective or appointive office or position shall, during the term for which he is
6 elected or appointed be eligible for election or appointment to any county
7 elective or appointive office or position.]

8 1. *It shall be lawful for a person to hold simultaneously an elective county*
9 *office and an elective municipal office.*

1 2. [Any person otherwise qualified shall be eligible for election or appoint-
2 ment to any county or municipal elective or appointive office or position
3 notwithstanding his holding of a membership in either the Senate or General
4 Assembly of the State. Membership in] *It shall be lawful for a member of*
5 *the Legislature of the State [shall not be incompatible with any] to hold*
6 *simultaneously any elective or appointive office or position in county or*
7 *municipal [elective or appointive office] government.*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

1 3. Nothing contained in this act shall be deemed to [preclude a member
2 of the board of chosen freeholders of a county or a member of the governing
3 body of a municipality or a member of the Legislature] *prevent the in-*
4 *cumbent of any office* from abstaining from voting *in any matter in which he*
5 *believes he has a conflict of duty or of interest*, nor [the] *to prevent a chal-*
6 *lenge of a right to vote* [, on any measure predicated upon an actual conflict
7 in such measure as between a county or a municipality and the Legislature or
8 between a county and a municipality of such county, where the member who
9 is to abstain or whose vote is to be challenged, holds an office in both a county
10 and a municipality or in a county or municipality and the Legislature] *on that*
11 *account under the principles of the common law or any statute.*

1 [4. This act shall be retroactive to January 1, 1959.]

1 4. (a) *Nothing herein contained shall be deemed to repeal or supersede*
2 *any statute prohibiting the dual holding of offices or positions.*

3 (b) *This act shall apply to persons now holding elective offices or posi-*
4 *tions with the counties and municipalities or now serving as members of the*
5 *Legislature of the State.*

6 (c) *For the purposes of this act the term "elective office" shall mean an*
7 *office to which an incumbent is elected by the vote of the general electorate.*

1 5. This act shall take effect immediately.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 19, 1962

ASSEMBLY BILL NO. 491

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 491, with my objections, for reconsideration.

Assembly Bill No. 491 is designed to permit certain public officials to hold more than one public office concurrently, even though duties and responsibilities of the offices might be deemed to be incompatible under the common law. Specifically, the bill would permit a member of the Legislature to also hold elective or appointive county or municipal office or position. In addition, it provides that any person holding county office shall be eligible for election or appointment to any municipal office. Conversely, a municipal official would be eligible to hold a county elective or appointive office.

Impetus has been given to this legislation by recent judicial decisions concerning the incompatibility of holding certain offices at different levels of government. In addition, there are now pending before the courts several suits to determine whether it is permissible for one person to hold certain specific offices at the same time.

The prohibition against dual officeholding is not constitutional in its base, nor indeed statutory in origin. It arises from the common law. The common law doctrine does not prohibit dual officeholding as such, but only the holding of offices, the rights, duties and obligations of which are incompatible with each other. This doctrine, however, may be extended or restricted by legislative action. For example, R. S. 19:3-5 provides that no person shall hold at the same time more than one of a number of specific offices listed therein.

I am in accord with the purposes of this bill to the extent that it would modify the common law doctrine to permit members of our Legislature to come

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 491

- 2 -

from the ranks of our county and municipal officeholders and employees. The Legislature's responsibilities must, of necessity, touch upon all phases of governmental activity. A liberal construction, therefore, of the duties of the Legislature could effectively prevent all or most of our public officials or employees from serving in this important deliberative body. For example, it could be argued that school teachers should be barred from the Legislature because they would be required to pass upon legislation that would have an effect upon the school system.

During the years that the common law doctrine of prohibiting the holding of incompatible offices was evolved, relatively few people were engaged in the business of government. Strict enforcement of the common law doctrine, therefore, would not have deprived legislative bodies of the talents and experiences of a large number of people. This would not be true today, however, since the business of government occupies the activities of many of our citizens.

In New Jersey, we rely upon individuals to serve in the Legislature as a part-time duty. They are expected to derive their livelihood and that of their families from other activities, public and private. Application of the common law doctrine to this area could effectively remove from legislative deliberations all persons connected with public life. This could only work to the ultimate detriment of the general public.

The bill, however, goes beyond the provisions relating to legislators. It attempts to authorize the holding of elective or appointive offices by persons who already are holding elective or appointive offices at a different level of government. To the extent that the bill would validate the concurrent holding of more than one elective office, I find it acceptable. A person who holds elective office must periodically submit to the people an accounting of his stewardship. His dual officeholding is open for all to see and can be terminated whenever his constituents so decide. The values to be gained by permitting one person to bring to several elective offices the

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 491

- 3 -

experiences garnered from each, more than offset any theoretical incompatibility which might exist between such offices. This is especially true because the people have sanctioned such a result, and it continues to exist only with their approval.

The reasoning which would justify dual officeholding by legislators and other elected officials cannot be extended, in its fullest sense, to local officials who hold appointive offices or positions. For one thing, the public may not be aware that a single individual is holding two offices which have duties and responsibilities potentially or actually in conflict. Moreover, the possibilities for the existence of actual rather than theoretical incompatibility of office are infinitely increased by extending the provisions of this bill to the numerous appointive offices and positions that exist on our county and municipal levels of government. A mayor or a municipal assessor, for example, under this bill in its present form, also could serve on the county tax board, an obviously incompatible situation. Considering the very real possibilities for actual conflict, I can find no overriding justification for permitting local officeholders or employees to hold an additional office or appointive position where incompatibility does in fact exist between the duties and obligations of such offices and positions.

It should be remembered, however, that the common law doctrine does not bar the holding of more than one appointive position where this element of incompatibility does not exist. My action on this bill, therefore, should not be construed to reflect on the right of persons to hold appointive offices or positions concurrently where incompatibility does not exist.

Accordingly, I am returning Assembly Bill No. 491 for reconsideration, with the recommendation that the bill be amended as follows:

On page 1, title, lines 1 and 2, delete "officers and employees" and insert in lieu thereof "the dual holding of offices and positions".

On page 1, section 1, lines 1 to 7, delete section 1 in its entirety and insert in lieu thereof:

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 491

- 4 -

"1. It shall be lawful for a person to hold simultaneously an elective county office and an elective municipal office."

On page 1, section 2, lines 1 through 4, delete the first sentence of the section in its entirety.

On page 1, section 2, line 4, delete "Membership in" and insert in lieu thereof, "It shall be lawful for a member of".

On page 1, section 2, lines 4 and 5, delete "shall not be incompatible with any" and insert in lieu thereof, "to hold simultaneously any elective or appointive office or position in".

On page 1, section 2, line 5, delete "elective or ~~municipal~~ ^{appointive} office" and insert in lieu thereof "government".

On page 1, section 3, lines 1 through 3, delete "preclude a member of the board of chosen freeholders of a county or a member of the governing body of a municipality or a member of the Legislature" and insert in lieu thereof, "prevent the incumbent of any office".

On page 1, section 3, line 4, following "voting" insert "in any matter in which he believes he has a conflict of duty or of interest,".

On page 1, section 3, line 4, delete "the" and insert in lieu thereof "to prevent a".

On page 1, section 3, lines 4 through 9, starting with and including ", on any measure predicated upon", delete the remainder of the section and insert in lieu thereof, "on that account under the principles of the common law or any statute."

On page 2, section 4, line 1, delete section 4 in its entirety and insert in lieu thereof:

"4. (a) Nothing herein contained shall be deemed to repeal or supersede any statute prohibiting the dual holding of offices or positions.

"(b) This act shall apply to persons now holding elective offices or positions with the counties and municipalities or now serving as members of the Legislature of the State.

"(c) For the purposes of this act the term 'elective office' shall mean an office to which an incumbent is elected by the vote of the general electorate."

Respectfully,

RICHARD J. HUGHES

GOVERNOR

[SEAL]

Attest:

LAWRENCE BILDER

Acting Secretary to the Governor