2A:135-9 N. J. Legislative Histories

Feb. 23, 1956

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N. J. PUBLIC OFFICERS: REMOVAL AND SALARY THEREAFTER

Legislative History of the following Sections of the New Jersey Revised Statutes.

2A:135-9. Forfeiture of office or position; restoration on reversal

"Any person holding an office or position, elective or appointive, under the government of this state or of any agency or political subdivision thereof, who is convicted upon, or pleads guilty, non vult or nolo contendere to, an indictment, accusation or complaint charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office or position, or which involves moral turpitude, shall forfeit his office or position and cease to hold it from the date of his conviction or entry of plea.

"If the conviction of such officer be reversed, he shall be restored to his office or position with all the rights and emoluments thereof from the date of the forfeiture.

Historical Note

Source:
R.S. 2:160-9; 2:160-10.
R.S. 2:160-9, 2:160-10 (L.1913, c. 74, Secs 1, 2, p.116 (1924 Suppl. Secs. 52-21bb, 52-21bc), suppl. to L.1898, c. 235, p. 794) read as follows:

"2:160-9. Any person holding an office, elective or appointive, under this state, or any county or municipality thereof, who shall be convicted upon, or who shall plead guilty, non vult or nolo contendere to, an indictment or allegation charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office, or which involves moral turpitude, shall forfeit such office and cease to hold the same from the date of such conviction or entry of such plea as aforesaid.

"2:160-10. If the conviction against such officer be reversed, he shall be restored to his office with all the rights and emoluments thereof from the date of such forfeiture, but a pardon shall not have such effect."

New Jersey Law, 1898, Chapter 235.

General law pertaining to criminal matters.

New Jersey Law, 1913, Chapter 74 (A.188).

A.188 was enacted as a supplement to chapter 235, 1898. Its exact language is given in above Historical Note. There was no statement of purpose on the bill. It passed both houses without amendment.

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2A:158-14. Salaries of prosecutors suspended when attorney general attends in county on request of assignment judge of superior court.

(cf: 2:182-12)

Whenever the attorney general, either personally, or by such assistant or assistants as he may designate, shall, at the request of the assignment judge of a county, attend in the county for the purpose of prosecuting the criminal business of the state therein, including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand jury of such county and the preparation and trail of indictments for crimes and misdemeanors, in accordance with section 52:17A-4 of the title State Government, Departments and Offices, and such attendance, by the attorney general in person or by such assistant or assistants as the attorney general may have designated for that purpose, shall continue in such county for a period of more than 3 months, the payment of the salary or other compensation of the prosecutor in and for such county shall be suspended from and after the expiration of a period of 3 months after the commencement of such attendance, and such suspension of payment shall continue until such attendance of the attorney general shall have terminated the prosecutor shall have reassumed the discharge of his duties. Whenever the payment of the salary or compensation of any prosecutor shall be subject to suspension as herein provided, the county board or officer charged with the duty of paying or providing for the payment of such salary or compensation shall suspend the payment thereof for the period fixed by this section."

Historical Note

Source:
R.S. 2:182-12.
L.1932, c. 222, Secs. 1, 2, pp. 498, 499, suppl. to Rev. 1877, p. 56.

2:182-12, New Jersey Laws 1932, Chapter 222 (S.311)

S.311 was introduced by Senator William H. J. Ely, Bergen County and referred to Committee on the Judiciary. Committee members: Emerson L. Richards, Atlantic County; Joseph G. Wolber, Essex County; Dr. Elmer Gale, Sussex County. The bill passed both Houses without amendment. The following is the Statement on the original print of S.311:

"Sec. 1 of P.L. 1911, p. 325, as amended by P.L. 1922, p.11, provides that the Attorney General may supercede the prosecutor of the pleas in any county under certain conditions.

"Sec. 2 of P.L. 1911, p. 325, as amended by P.L. 1927, p.116, provides for the adequate compensation of the Attorney General, or his assistants, in such cases where he has suspended any prosecutor of the pleas.

There is no corresponding provision in the acts relating to prosecutors of the pleas to balance the situation.

"The purpose of this act is to authorize and provide for the suspension of the payment of the salary of the prosecutor of the pleas of any county when he has been superceded by the Attorney General, and such supercedure has extended for a period of more than three months."

The following is the Trenton Times comment on S.311 and S.312, both introduced by Sen. Ely and both passed and submitted to the Governor. S. 312 was vetoed by the

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Governor (Copies of S.312 and Governor's Veto message thereon submitted):

Trenton Times, June 10, 1932:

"Senator Ely put through both branches a measure which would eliminate the salary of any county prosecutor at the end of three months in the event he is superseded by order of thecourt. It is designed to deal with a situation in Bergan County where Prosecutor Edward O. West has been drawing salary for nearly two years while the work of the office has been in charge of an assistant attorney general."

Trenton Times, June 16, 1932:

"Among the measures filed without signature was the bill to require Supreme Court justices to file with the Governor their reasons for removing county prosecutors.

"This bill provides a limitation upon the Governor in which to file charges with the House of Assembly and in the present instance would necessitate the calling of a special session of the legislature", said the Governor. "I do not believe there should be any limitation. The legislature already has the power of impeachment."

"The bill was one of two sponsored by Senator Ely, of Bergen, and aimed at a situation in that county, where Prosecutor Edward O. West was removed nearly two years ago. The other, signed earlier, provides for the suspension of the salary of an ousted prosecutor three months after he has been superseded by the attorney general."

New Jersey Law, 1951, Chapter 344 (S.1, First Special Session)

S.1 was introduced in the Senate, November 19, 1951 by Senators Hannold and Clapp, without Reference to Committee. It was passed by Senate, November 26, and by House, November 28. No amendments were made by either house. Bill was approved by Governor, December 5, 1951. Copies of S.1, in original and Official Copy Reprint form, are supplied. The title of S.1 indicates its nature and purpose. The actual text of the bill as such was not printed. Matter following the title explains the reason for such omission. Sections 7 and 8 of the explanation pertain to the construction of Title 2A, which title is the subject of S.1. One of the sections of Title 2A, which was enacted through passage of said S.1, First S.S. 1951 differs in wording from the words of 2:182-12, which it replaced, by omission of the last sentence of 2:182-12, "When the period of suspension of payment has ended, the total amount of such salary or other compensation held in suspense shall be paid to the prosecutor of the pleas".

The text of S.1 was prepared by a special committee, The Advisory Committee on Revision of Statutes. Its members were: Peter P. Artaserse, Harold W. Hannold, George W. C. McCarter, Robert B. Meyner, Elden Mills, Theodore D. Parsons, Elvin R. Summill, Arthur T. Vanderbilt, and Alfred C. Clapp, Chairman. The Committee's Secretary was John H. Yauch, Jr., 11 Commerce Street, Newark 2, N.J. No copy or data on the Committee's deliberations was filed with the State Library. Preceding introduction of S.1, S.S. 1951, the Committee issued a tentative draft of Title 2A. A copy of this is in the library collection. Its foreword states that it "is submitted to bench, bar and public for suggestions". The Committee requested that such suggestions be submitted to its Secretary. The draft also

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acknowledges the services of some 100 listed "reporters" who contributed to its preparation. No copy of any suggested amendments to Title 2A which the Committee Secretary may have received was ever filed with the State Library. The Library has made frequent request that background data on the preparation of 2A be filed in the State Library, or that information as to the repository of such data be supplied for referral purposes.

The following are comments appearing in the Trenton Times on the passage S.1, S.S. 1951:

Trenton Times, November 20, 1951

"The speed of the session timetable was assailed by Assemblymen Tumulty and Friedland, both of Hudson, who argued the legislators were moving too fast on the proposed broad revision of statutes.

"Tumulty cited the proposed downgrading of certain crimes from grand jury offenses to disorderly acts that could be tried before municipal magistrates as matters calling for discussion and careful deliberation before a final vote.

"Majority Leader Cavinato said the changes had been drafted by a committee of lawyers after months of study and represented the best thinking of experts to bring about the administration of justice.

"Tumulty obtained from House Speaker Thompson an assurance that opportunity would be afforded next week for submission of amendments. It was indicated a number would be offered."

Trenton Times, November 29, 1951

"The State Legislature has delivered to Governor Driscoll a bundle of bills that revises New Jersey's laws on crime and administration of estates.

"Driscoll called the Legislature into special session expressly to approve a general revision of the laws, something that never had been done before. There had been compilations that were called revisions, the most recent in 1937. This was the first time a body of lawyers put a scapel to the statutes.

"They cut out about 350 pages of law, reduced 57 crimes from misdemeanors to disorderly persons acts, clarified the rule making power of the State Supreme Court, and modernized statutes on the administration of estates."

52:17A-5. Authority of Attorney-General as county prosecutor.

"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.

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"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 saidcounty 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 the 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. L.1944, c. 20, p. 52, Sec. 5, L.1953, c. 49, p. 859, Sec. 22."

New Jersey Laws 1944, Chapter 20, Sec. 5, p. 52 (S.133)

S.133 contained no statement of purpose. It was introduced by Sen. Farley, Atlantic County and referred to the Judiciary Committee. Committee members: Farley, Proctor, Barton, Sholl, Moelan. Approved by the Fiscal Affairs Committee. Reported by Judiciary Committee as a Committee substitute and passed in this form by both houses. S.133 as introduced did not include the following words which appeared in the text of the Committee Substitute: "No compensation so allowed shall affect the salary of the prosecutor or assistant prosecutor."

New Jersey Laws 1953, Chapter 49, Sec. 22, p.459 (S.45)

S.45 contained no statement of purpose. It was introduced by Senator Clapp, Essex County and referred to the Committee on Revision and Amendment of Laws. Committee members: Clapp, Hand, Forbes, McCay, Vogel.
It passed the Senate without amendment. In Assembly it was referred to the Committee on Revision and Amendment of Laws. Members: Tompkins, Deemer, Cahill, Silver, Stewart. Passed Assembly without amendment; S.45, as introduced and enacted into law, contained the same words as Chapter 20, N.J.L. 1944: "no compensation so allowed shall affect the salary of the county prosecutor".

Ask KR for transcript.

40:146-14. Salary of employee illegally dismissed; recovery.

"Whenever a municipal officer or employee, including any policeman or fireman, has been or shall be illegally dismissed from his office or employment, and such dismissal has been or shall be judicially declared illegal, he shall be entitled to recover the salary of his office or employment for the period covered by the illegal dismissal."

Historical Note

Source:
L. 1918, c. 139, secs. 1, p. 322, as am. by L. 1919, c. 149, sec. 1, p. 323 1924 Suppl. secs. 136-1320B (1)7. L. 1926, c. 153, sec. 1, p. 257: 1948, ch. 163, sec. 1, p. 900; 1948, ch. 395, sec. 1, p. 1592.

New Jersey Laws 1918, Chapter 139 (A. 231)

A. 231 was introduced by Ralph H. Kellam, Camden County, and referred to Municipal Corporations Committee. Passed both houses, without amendment except for substitution of word, "court" for "tribunal". The statement on the original print of A. 231 follows:

> "This is a bill to protect the employees and officers of municipalities who may be illegally dismissed from their employment. It is now possible under the law to illegally dismiss a man, and when the dismissal is set aside as illegal, it may happen in many instances that the individual cannot recover the salary that is rightfully his because of the law and the decisions in this State. In a word, the Civil Service Law does not give the protection that it ought to give. This bill would remedy that evil and would protect the individual."

New Jersey Laws 1919, Chapter 149 (A. 360)

A. 360 was introduced by Ralph H. Kellam, Camden County, and referred to Municipal Corporations Committee. It passed both houses without amendment. The only difference in the language of Chapter 139, Laws of 1918 and Chapter 149, Laws of 1919 is in the change in tense of verbs used. The verb "shall have been" in Chapter 139, Laws of 1918 was changed to "has been or shall be" in Chapter 149, Laws of 1919. The text of Chapter 139, Laws of 1918 follows:

> "Whenever any municipal officer or employee shall have been illegally dismissed from such office or employment and the said dismissal shall have been set aside as illegal by a court of competent jurisdiction, such officer or employee shall be entitled to recover the salary of such office or employment for the period covered by such illegal dismissal."

The statement on the original print of A. 360 follows:

> "The purpose of this bill is to clarify the meaning of Chapter 139, P. L. 1918, and make it read more clearly, as intended to cover all cases where a municipal officer or employee has been or shall be illegally dismissed from such office or employment and the said dismissal has been or shall be set aside as illegal by a court of

competent jurisdiction and entitle such officer or employee to recover the salary of such office or employment for the period covered by such illegal dismissal.

"In the case of Van Sandt v. Atlantic City the Supreme Court has held that a public officer who claimed to have been unlawfully dismissed from his office cannot recover salary without first having recourse to the court and having the illegal dismissal reversed. Consequently under this act no officer or employee whoclaims to have been illegally dismissed can recover the salary of his office until he first hasrecourse to the court and has said illegal dismissal reversed.

"Supreme Court Justice Parker in recently deciding the case of Cahill v. West Hoboken (October 28, 1918) held that Chapter 139, P. L. 1918, entitles one who was illegally dismissed prior to the passage of said act, and whose dismissal the court has reversed, to recover salary for the time he was illegally deprived of his office, and in the opinion rendered in said case Justice Parker says:

> The expression 'shall have been' is strictly applicable to one who after the passage of the act is in the condition of 'having been.' If the law-making body had intended to deal with future cases only they would have used the form 'wherever any officer shall be' &c.

"and cites the case of Jersey City v. Speer, 78 N. J. Law 34, at page 39, to evidence that the expression "shall have been" is a common form of expression in statutes, and in his judgment "does not indicate that the Legislature intended to restrict the act to future cases of removal." However, there seems to be some doubt about the construction of Chapter 139, P. L. 1918, and therefore this bill is to clarify the situation. Under this act a dismissed municipal officer or employee cannot recover salary for the time he was deprived of hiss office or employment unless the Supreme Court determines in an appropriate action and he was illegally dismissed."

New Jersey Laws 1926, Chapter 153 (A. 302)

A. 302 was introduced by Sharkey, of Hudson County and referred to the Committee on Claims and Pensions. It passed both houses without amendment. Language of Chapter 153, L. 1926 was as follows:

"When any person has been or shall be appointed by the governing body of a municipality as a policeman or fireman, and thereafter dismissed by means of a resolution adopted by the governing body of such municipality and such resolution has been or shall be set aside by the Supreme Court, such person shall be entitled to receive the salary, prevailing in such municipality for policeman and fireman for the period of time during which such person was deprived of the right to perform his duty as such policeman or fireman."

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The statement on the original print of A. 302 follows:

"The purpose of this bill is to enable persons who were appointed policemen and firemen by the board of commissioners of the city of Bayonne, who, after performing duties for a short time, were removed by means of a resolution, which was thereafter set aside by the Supreme Court and decision affirmed by the Court of Errors and Appeals (O'Neill v. Bayonne, 99 N. J. L. 430; Carroll, Quinn et al v. Bayonne, 99 N. J. L. 493), to receive payment of salary for the period of time during which they were illegally prevented from rendering service."

New Jersey Laws 1948, Chapter 163 (A.229)

A.229 was introduced by Walter H. Jones, Bergen County. Referred to Committeeon Revision and Amendment of Laws. Committee members: Cavinato, Salsburg, Mills, Curtis, Tumulty. Passed Assembly without amendment. Amended by Senate Committee on Revision of Laws. Committee Members: Hannold, Hand, Mathis, Meyner. Senate amendment to A.229 follows:

"Senate amendment to Assembly Bill No. 229:
Amend page 1, section 1, line 8, after "pension" insert ", provided that a written application therefor shall be filed with the clerk of the municipality within thirty days after such judicial determination, unless such determination was made prior to the effective date of this act, in which case such application shall be filed within thirty days after the effective date of this act".

The statement on the original print of A.229 follows:

"The present law is R.S. 40:46-34. It only applied to persons illegally dismissed. Recently the Court of Errors and Appeals in the case of Strohmeyer v. Little Ferry held that a police officer illegally suspended could not recover his salary during the period of the suspension because the present law was not broad enough. The courts differentiate between "dismissal" and a suspension. The present act grants relief to any officer or municipal employee who has been illegally suspended."

New Jersey Laws 1948, Chapter 395 (A.547)

A.547 was introduced by Walter H. Jones, Bergen County. It was referred to the Committee on Municipalities. Committee members: McKay, Mills, Widnall, Cossoline, Dickerson. The bill passed both houses without amendment. The statement on the original print of A.547 follows:

"The act to which this amendment applies was introduced by 1948 A.229. The bill was amended in the Senate and as amended was passed by the Assembly and approved by the Governor.

"The act as it is now on the books contains a proviso that if the determination was made prior to the effective date of the act, written application must be made within 30 days from the date of this act. This period of time is too short in view of the fact that members of the bar and general public do not have actual notice, as distinguished from the constructive notice of the passage of laws and their approval by the Governor, until they are published and circulated either by the West Publishing Company, Soney and Sage Company, or some other distributing agent. It is impossible to believe that any person affected by the passage of this statute could possibly have notice of it in time to file a claim within 30 days.

"To illustrate the difficulty of acting on such short notice the pamphlet, New Jersey Statutes Annotated, which was published in July, 1948, simply contains the laws enacted up to May 13, 1948. This is the cumulative pamphlet to New Jersey Statutes Annotated."

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M.d. PUBLIC OFFICERS AND EMPLOYEES: APPOINTMENT, TENURE, REMOVAL, ETC.

New Jersey Constitution, 1947, Arts. 5, Executive & 7, Public Officers...

Excerpts from New Jersey Constitutional Convention, 1947. Record of Proceedings. 5 vols.

V. 2: Monographs

The Appointive Power - Tenure, Removal and Confirmation of Officers, by Amos Tilton, p. 1383-1409.
At p. 1403, quotes text of Proposed Constitution 1944: "Prosecutors of the pleas shall be nominated by the Governor and confirmed by the Senate for terms of 5 years. Art. 6, Sec. II, para. 2 ..."

The Governor - Constitutional Power of Investigation and Removal of Officers, by A.S. Freedman, p. 1410-1417.
Discusses investigation and removal powers of Governor. Excerpts supplied.

(Note: Neither monograph discusses salary termination or removal of officer or payment thereof on his reinstatement. Nor was this point raised in the Report of the Committee on the Executive ... which considered the removal proposal No. 3-1 or in proposed amendments offered thereon.

N.J. Joint Legislative Committee created by SCR 2, 1953. Recom. to the Legislature. 1953. (Stamler Report): Recommendation VII: that the legislation be enacted whereby payment of the salary of a prosecutor of any county shall cease forth with whenever he shall be superseded or relieved of his duties for reasons arising out of the improper conduct of his office.)

V. 3: Seventh Session, Aug. 12, 1947, p. 262—

At p. 263, re Rights and Privileges Proposal. Amendments from floor: Walter G. Winne: "I have an amendment which is substantially a committee amendment to Para. 4 of Sec. IV of the Executive Articles which provides in substance that a removed officer or employee shall have the right of review on the law and on the facts, in such manner as may be provided by law. I offer the amendment."
Amendment handed to the Secretary.

(Note: N.J. Constitution, Art. 5, Executive, Sec. 4, para. 5, so provides.)

V. 5: Afternoon Session, June 24, 1947, p. 29—
Committee on Executive, Militia, etc.

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At p. 38, re: Prosecutors of pleas. Testimony of Gov. Alfred E. Driscoll, In answer to a query. "It seems to me that prosecutors of the pleas, as we now know them, and if continued, should be appointed by the Governor subject to confirmation by the Senate and should be a part of the Department of Law. There is no need for the continuation of prosecutors of the pleas ... as constitutional officers ... Of course they could continue to perform the functions that those men have performed in the 103 years since the Constitution of 1844 was written."

Morning Session, July 8, 1947. p. 205-206.
Re: Prosecutors of pleas.
After discussion that to give officers term of office in Constitution would make them removable only by impeachment, Farley moved Prosecutors be retained as in Constitution, 1944, Art. 6, Sec. 2, Para. 2. Motion seconded. Eggers moved to amend by providing that a removal shall be provided by law. Motion carried as amended. Miller moved title be changed to County Prosecutor. Seconded and carried 5 to 3.

Morning Session, July 10, 1947. Re: Public Officers and Employees Article of Constitution, 1947.
At p. 289. Prosecutors: Sec. II, Para. 1 of Public Officers Article read as follows:
"County prosecutors shall be nominated and appointed by the Governor with the advice and consent of the Senate. Their term of office shall be 5 years and they shall be removable in a manner to be provided by law."

Discussion followed as to just what a county prosecutor was--a state or county law enforcement officer. William Miller described the officer as having a dual capacity "in local peace as well as state law enforcement ..." The Chairman: "... in all their functions and in everything they look primarily to the county ... so that the office isn't necessarily per se an arm of the State Government."

At p. 291. Above text of section adopted.

Morning Session, July 29, 1947. p. 337-39.
Testimony: Walter D. Van Riper, N.J. Attorney General.
At page 337, re: proposed language of Public Officers and Employees Article, Sec. II, relative to appointment of county prosecutors be amended so as to provide term of 5 years. "and until their successors shall be appointed and qualify." Phrase adopted (p. 406)

At page 339, In answer to a question of Mrs. Burns, Van Riper discussed removal procedures in removal of county prosecutor.
"Mr. Van Riper: I think it would be a fair removal process to subject them to removal on the same basis on which constitutional officers and other civil officers of the State are liable to impeachment. I think that your provision in here on impeachment is perfectly all right. I think it is very fair, very honest, for misdemeanor--whether in

connection with the conduct of their office or otherwise. I personally would think that was perfectly fair to everyone concerned. But I think that the people who have the power to pass upon that removal and to adjudicate it ought to be defined in the Constitution. My personal thought is that it ought to be the Governor or the Supreme Court.
Mrs. Barus: As an officer of the government he would be liable to impeachment with cause.
Mr. Van Riper: He would be liable to impeachment.
Mrs. Barus: It wouldn't be necessary to put that in.
Mr. Van Riper: That's right; even without this.
Chairman: Are there any other members of the Committee who would like to ask the Attorney-General a Question?"

New Jersey Constitution, 1947 Art. 8, Sec. 3, Para. 2.

"2. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation."

A careful, page by page check of the Proceedings of the Constitutional Convention, 1947 did not disclose any discussion of this particular section.

See enclosed typed compilation on New York Public Officers, p.2-3. for New York Courts ruling on same provisions in N.Y. Constitution (Now Art. 8, Sec11)
(People v. Grout, 90 N.Y.S.122)

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NEW YORK PUBLIC OFFICERS: REMOVAL AND SALARY CONSIDERATIONS

Constitutional and Statutory Authority

New York Constitution, Art. 4, Executive, Sec. 3, Powers and Duties.

"... He ... shall take care that the laws are faithfully executed ..." This phrase has been construed by the Courts as giving the Governor power to remove officials. (21 N.Y.S. 2d 270). And the section, together with sections of Executive Law, secs. 6 and 68, have been held to give the Governor authority for inquiries and investigations into matters concerning the public peace, public safety, and public justice and investigation of affairs of government (105 N.Y.S. 2d 268; 105 N.Y.S. 2d 669, 303 N.Y. 206)

The section is derived from the New York Constitution, 1938. The New York Constitutional Convention Committee, 1938, v. 8, "Problems Relating to Executive: Administration and Powers" attempts to review existing constitutional and statutory provision of N.Y. and other states on these matters. Chapter 2 covers Executive Powers and Chapter 8, Constitutional Problems Regarding Removal of Officers. The volume is supplied. To be mailed or given to J. Tasch

Mc Kinney's Consolidated Laws of New York. Annotated, 1952. With pocket parts, 1955.

Book 18, Executive Law, Art. 2, Sec. 6: "Examination and Inspection by the Governor: The Governor is authorized at any time, either in person or by one or more persons appointed by him for the purpose, to examine and investigate the management and affairs of any department, board, bureau or commission of the state. The governor and the persons so appointed by him are empowered to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material. Whenever any person so appointed shall not regularly in the service of the state his compensation for such services shall be fixed by the governor, and said compensation and all necessary expenses of such examinations and investigations shall be paid from the treasury out of any appropriations made for the purpose upon the order of the governor and the audit and warrant of the comptroller."

Historical Note

Section is from Executive Law of 1909, c. 23, Sec. 8, as amended by L.1928, c.131. Said section 8 derived from Executive Law of 1892, c. 683, Sec. 7, as added by L. 1907, c. 539, Sec. 1.

Chap. 539, N.Y.L. 1909 mentioned in the Historical Note is N.Y.'s Moreland Act. "The Moreland Act: Executive Inquiry in the State of New York:" by J.E. Missall, 1946, contains details of its passage and compares it with other State laws of like nature. Chapter 2, "Origin of the Act," attributes it to the Gov., Charles E. Hughes, whose own investigation of insurance companies had earned the confidence of the public in his ability and integrity; Chapter 3, "Comparative State Legislation,"

lists New Jersey as one of the States whose law closely paralleled the New York statute. It contains a detailed comparison to the New Jersey law referred to as "New Jersey's Moreland Act". (Missall pamphlet supplied.) mailed to J. Jacobs with memo

Book 46, Public Officers, Art. 3, Secs. 33-34. These sections related to removal of officers by the Governor and procedure thereunder. They are derived from N.Y.L. 1892, Chapter 681, Public Officers Law, as amended. It has not been possible to fill in the legislative history of the enactment of these sections. In any attempt to provide such history it was noted that the Public Officers Law, Chap. 681, L. 1892; the Legislative Law, Chap. 682, L. 1892; and the Executive Law, Chap. 683, L. 1892 (which contains the Governor's investigatory powers) were all signed May 18, 1892 and in their titles are called "Chapters 7-8-9, of the General Laws". Attempts to establish from the State Library collection of N.Y. [illegible] that these statutory provisions were considered together, either by the legislature in enacting them or the Governor in approving them on the same day, proved fruitless.

The New York State Library has been contacted as to the legislative history of the above sections and on the legislative history of New York statutory provisions for salary reimbursement of reinstated officers. To date no such history has been established.

The Legislative intent, and its apparent policy and objective in enacting the above sections are dealt with in much detail in State of New York v. Ahearn, 196 N.Y. 221 (1909); 26 LRA New Series 1153. The case involved a county officer removed by the Governor for incompetence and reappointed by county officials to the very office left vacant by such removal. The Court termed such reinstatement "reimbursement for his loss". In defining the term, "office" the Court quoted from Burrell's Law Dictionary: "The idea of an office clearly embraces the idea of tenure, fees or emoluments, rights and powers, as well as that of duty..."
(26 LRA supplied) (2) To be mailed or given to J. Jacobs

Book 9, Civil Service Law, Sec. 23, Compensation of Officers and Employees Reinstated by Order of the Courts. (3) Text of section 23 supplied

Historical Note

Section derived from L. 1901, c. 533, as amended by L.1904, c. 637.

Note of Commission.—Board of Statutory Consolidation: "This statute, 1904, Ch. 637, was passed for the benefit of one George Blair, a veteran, removed from the position of superintendent of outdoor poor in the city of New York. See People ex rel. Blair v. Root, 45 Misc. 505. In terms, however, it is a general law, applicable to all veterans discharged in violation of section 21 of the 'old' Civil Service Law, and is an express exception to the rule of law that an official illegally removed cannot recover the salary paid to his successor before the state, city or municipality had knowledge that the removal was illegal." Report of Board of Statutory Consolidation, 1907, p.473.

The above Section 23 of Civil Service Law was challenged as a contravention of the N.Y. Constitution, Art. 8, Sec. 1, prohibiting the giving money or property to an individual, People v. Grout, 90 N.Y.S. 122 (1904). In this case the Court held the

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Constitutional provision did not deny payment of a moral obligation and that it was not prepared to hold there was no moral obligation where an officer has been wrongfully removed.

The section 23 was amended by N.Y.L. 1929, Chap. 511; L. 1934, Chap. 366; L. 1935, Chap. 734.
A search through the New York Time Index 1929-35 for background material on these laws on which the section is based reveals only the following:

> Lehman vetoes Eynes bill requiring removal trials and bill on removal of veterans and volunteer firemen; signs McNaboe bill granting full salaries to reinstated persons, New York Times Index, 1935, p. 1089.
>
> The Governor signed the McNaboe bill... He wrote:
> "This bill is very essential to safeguard the rights of civil service employees and protect them against improper removals...
> "To deny a civil service employee this compensation would deprive him of his full remedy in bringing his dismissal to the Courts for adjudication. "The bill is approved." New York Times, May 7, 1935, p. 10.

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BUREAU OF LAWAND LEGISLATIVE REFERENCE

PUBLIC OFFICERS: REMOVAL AND SALARY THEREAFTER

General Discussions of the Law:

In U. S. and England

"Removal of Public Officers from Office for Cause"(3 Michigan Law Review 290-301)
To the effect that in England and at common law public office had an incorporeal hereditament and public officer has property right in his office. In U.S. office is not property right, nor is it in the nature of a contract between officer and state.

Power to Remove Public Officer without Notice and Hearing:Annotation(99 ALR 336-)
Discusses the American viewthat no one has a property right in a public office. Also reports from Oklahoma case, 13 Okla.585, 76 Pac.135, as follows: "A public office while not property is a position held of right by election or appointment, and all the Courts are quick to protect one in the enjoyment of these rights. They may differ ... as to what his rights are, but whatever the courts conceive them to be, it will protect as quickly and as fully as though it were property; and though this is don , in one sense for the benefit of the State, the right of the officer is worthy of some consideration ... it is the duty of the Courts to protect a citizen in the enjoyment of every right which he acquires under statutory or constitutional authority, as quickly and as fully as they would his property."

On consulting the opinion in the Oklahoma case quoted above, the court was found to further hold(76 Pac. 135, at 141) that the right to enjoy the honor and emoluments of an office are as sacred as property rights and "wherever one is entitled to enjoy any right, even though it may not be property, he may envoke the aid of the judicial power of the state to protect him in enjoying the same, and, as a rule, it is the only power that can afford him relief."

At p.142, of its opinion the court held that where an officer was illegally removed from his office(in this case without notice and hearing) that " he nevertk was removed from this office" and such removal "in no way affected his right to the property in question."

In New Jersey

"A New Jersey Municipal Law Mystery: What Is a 'Public Office'?"; by Abraham Glaser (6 Rutgers Law Review 503-527)
A study of over 100 New Jersey case on the above subject. Includes coverage of cases holding contractual status cannot attach to a public office.

At p.521 discusses Stuhr v. Curran (44 N.J.L.181)rule that no contractual right to part salary in the case of a temporary ouster of a de jure officer. Counsel for Stuhr in arguing the case cited authority(65N.Y.276) that a person who is rightfully entitled to an office, although not in actual possession of it has property in it and may recover salary arising therefrom from the public treasury.

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Also discusses Hoboken v. Gear (27 N.J.L. 265) that appointment to office for term of years is not a contract between the government and the person appointed that the officer will serve or that the government will pay during the term for which the officer was appointed. It is at most a contract that while the party continues to perform the duties of his office he shall receive the compensation which may from time to time be provided by law.

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BUREAU OF LAW AND LEGISLATIVE REFERENCE

PUBLIC POLICY

General Discussions

Definition: "Public policy" of state means the law of the state, whether found in Constitution, statute, or judicial records. Straus & co. v. Canadian Pacific Ry. co., 254 N.Y. 407

Definition: The "public policy" of New Jersey is the creature not of the courts but of the legislature; the courts have nothing to do with forming it, and can only recognize it like any other matter of public law. Bigelow v. Old Dominion Copper Mining &Smelting co., 74 N.J. Eq. 457.

"Public Policy in the Common Law"; by Sir Percy Henry Winfield. (In his Selected Legal Essays, p.241-265)

Includes: Definition of public policy and analagous terms, "against common right and reason"; Brief history of development of public policy with copious reference to Bracton, Pollock, Holdsworth; Narrowing application of public policy doctrines in Richardson v. Millish, 2 Bing.229, 242-43, where court held it had gone too far on public policy and where questions were doubtful they ought to be left to the legislature; describes Egerton v. Brownlow, 4 H.L.Cas(1853) in which 16 judges argued in the House of Lords their opinions on public policy; Current meaning of public policy; variability of public policy; How public policy is evidenced, at p.261-262; [illegible] public policy." One guide that they are certain to employ whenever it is available is statutory legislation in pari materia, if it is not too antiquated to be useful. In exercising this branch of judicial discretion, they must consider the tendency of the transaction which they are investigating. Tendency, it has been pointed out, is not an easy word to define; and it is not clear whether it signifies a mere possibility that a given act may develop into something contrary to the public weal, or whether there must be a probability of this occurrence as well." Limits of public policy; public policy is no ideal to which law ought to conform; there cannot be public policy leading to one conclusion when there is a statute directing a precisely opposite conclusion.