

LEGISLATIVE HISTORY OF R.S. 56:9-1 thru 56:9-19
(Anti-trust act)

Earlier bills introduced (1965-1970).

- 1968 - A664 (Gavan & others).
No statement.
Died in Committee.
- 1968 - A829 (Dickey & others).
No statement.
Passed Assembly.
Died in Senate Committee.
- 1969 - A172 (Dickey)
No statement.
Died in Committee.
- 1969 - A230 (Gavan & others)
No statement.
Died in Committee.
- 1970 - A256 (Dickey)
No statement.
- 1970 - A562 (Gavan & others)
No statement.

Legislation to attack organized crime through enactment of an anti-trust law recommended by:

- 974.90 Lacey, Frederick B.
C929 Recommendations to the 1970 ...
1970 Legislature ... p. 39-44 (ENCLOSED)

The State of Florida had also passed an antitrust law aimed at curbing organized crime. [DISCUSSED IN ABOVE REPORT]

Bill which became law:

- L. 1970, Chapter 73 - A971
Introduced April 23 by Dickey, Rinaldi, Parker and others.
May 7 - Amended in Senate (cop. enc. of original bill and amendment).
No statement.

This bill was part of the anti-organized crime package (A971 through A974) all introduced April 23, 1970. They were enacted into law in less than a month (Approved May 21, 1970, Chapter 73 thru 76). No hearings or reports on the bills themselves were located.

Newspaper clippings - N.J.-Organized Crime

"State Anti-trust Law Urged" 1/13/70 PI
"Government Business with criminals rapped" 1/13/70 TET
"An antitrust bill to fight the Mafia" 1/13/70 S-L
"Assembly gets anti-Mafia measure" 1/27/70 S-L
"Antitrust bill likely for N.J." 1/30/70 NEN

Copies of the above articles are enclosed.

Periodical articles:

Meth, T.S. & O'Connor, E.P.

Antitrust for New Jersey.

93 NJLJ 354 (May 21, 1970) (cop. enc.)

J/PER
R286

New Jersey Association of Realtor Boards.

New Jersey Realtor. [Short comment
on A971] Vol. 12, no. 6, ~~JUNE~~ 1970, p. 3 (cop. enc.)

RSL/PC

CHAPTER 73 LAWS OF N. J. 1970

APPR. V.D. 5/21/70

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 971

STATE OF NEW JERSEY

INTRODUCED APRIL 23, 1970

By Assemblymen DICKEY, RINALDI, PARKER, KEAN, WILSON, FONTANELLA, MORAITES, HOLLENBECK, TURNER, VANDER PLAAT, EVERS, McDONOUGH, THOMAS, GOLDFARB, CAPUTO, HAELIG, BROWN, DENNIS, KALTENBACHER, RUSSO, VOLK, CONNELL, Assemblywoman MARGETTS, Assemblymen De KORTE, COSTA, AZZOLINA, DAWES, FAY, LORDI, POLICASTRO, WEIDEL, MACRAE, KRAVARIK and GARIBALDI

Referred to Committee on Law, Public Safety and Defense

AN ACT to promote the unhampered growth of commerce and industry throughout the State by prohibiting restraints of trade which are secured through monopolistic practices and which act or tend to act to decrease competition between and among persons engaged in commerce and trade, whether in manufacturing, distribution, financing, and service industries or in related for profit pursuits, and making an appropriation therefor.

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

1 1. This act may be known and shall be cited as the "New Jersey
2 Antitrust Act."

3 2. a. As used in this act, unless the context otherwise requires
4 "person" shall mean any natural person or persons, or any cor-
5 poration, partnership, company, trust or association of persons.

6 b. "Trade or commerce" shall include all economic activity in-
7 volving or relating to any commodity or service.

8 c. "Commodity" shall mean any kind of real or personal prop-
9 erty.

10 d. "Service" shall mean any activity which is performed in
11 whole or in part for the purpose of financial gain, including but
12 not limited to sale, rental, leasing or licensing for use.

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. Every contract, combination in the form of trust or otherwise,
2 or conspiracy in restraint of trade or commerce, in this State, shall
3 be unlawful.

1 4. a. It shall be unlawful for any person to monopolize, or
2 attempt to monopolize, or to combine or conspire with any person
3 or persons, to monopolize trade or commerce in any relevant market
4 within this State.

5 b. No corporation engaged in commerce shall acquire, directly
6 or indirectly, the whole or any part of the stock or other share
7 capital of another corporation engaged also in commerce, where the
8 effect of such acquisition may be to substantially lessen competition
9 within this State between the corporation whose stock is so acquired
10 and the corporation making the acquisition, or to restrain such
11 commerce in any section or community of this State, or tend to
12 create a monopoly of any line of commerce within this State.

13 c. No corporation shall acquire, directly or indirectly, the whole
14 or any part of the stock or other share capital of two or more cor-
15 porations engaged in commerce where the effect of such acquisition,
16 or the use of such stock by the voting or granting of proxies or
17 otherwise, may be to substantially lessen competition within this
18 State between such corporations, or any of them, or to restrain
19 such commerce in any section or community of this State, or tend
20 to create a monopoly of any line of commerce within this State.

21 d. This section shall not apply to corporations purchasing such
22 stock solely for investment and not using the same by voting or
23 otherwise to bring about, or in attempting to bring about, the sub-
24 stantial lessening of competition. Nor shall anything contained
25 in this section prevent a corporation engaged in commerce from
26 causing the formation of subsidiary corporations for the actual
27 carrying on of their immediate lawful business, or the natural and
28 legitimate branches or extensions thereof, or from owning and hold-
29 ing all or a part of the stock of such subsidiary corporations, when
30 the effect of such formation is not to substantially lessen com-
31 petition.

32 e. Nothing contained in this section shall be held to affect or im-
33 pair any right heretofore legally acquired.

1 5. a. This act shall not forbid the existence of trade and profes-
2 sional organizations created for the purpose of mutual help, and
3 not having capital stock, nor forbid or restrain members of such
4 organizations from lawfully carrying out the legitimate objects
5 thereof not otherwise in violation of this act; nor shall those or-
6 ganizations or members per se be illegal combinations or con-
7 spiracies in restraint of trade under the provisions of this act.

8 b. No provisions of this act shall be construed to make illegal:

9 (1) The activities of any labor organization or of individual
10 members thereof which are ***directly*** *directed** solely to labor
11 objectives which are legitimate under the laws of either the State
12 of New Jersey or the United States;

13 (2) The activities of any agricultural or horticultural coopera-
14 tive organization, whether incorporated or unincorporated, or of
15 individual members thereof, which are directed solely to objectives
16 of such cooperative organizations which are legitimate under the
17 laws of either the State of New Jersey or the United States;

18 (3) The activities of any public utility, as defined in R. S. 48:2-13
19 to the extent that such activities are subject to the jurisdiction of
20 the Board of Public Utility Commissioners*, *the Department of*
21 *Transportation, the Federal Power Commission, the Federal Com-*
21A *munications Commission, the Federal Department of Transporta-*
21B *tion or the Interstate Commerce Commission**;

22 (4) The activities, including, but not limited to, the making of
23 or participating in joint underwriting or joint reinsurance arrange-
24 ments, of any insurer, insurance agent, insurance broker, indepen-
25 dent insurance adjuster or rating organization to the extent that
26 such activities are subject to regulation by the Commissioner of
27 Insurance of this State under, or are permitted, or are authorized
28 by, the Department of Banking and Insurance Act of 1948
29 (C. 17:1-1 et seq.), and the Department of Insurance Act of 1970
30 (C. 17:1C-1 et seq.).

31 (5) The bona fide religious and charitable activities of any not
32 for profit corporation, trust or organization established exclusively
33 for religious or charitable purposes, or for both purposes;

34 (6) The activities engaged in by securities dealers, issuers or
35 agents who are (i) licensed by the State of New Jersey under the
36 Uniform Securities Law (C. 49:3-47 et seq.), or (ii) members of
37 the National Association of Securities Dealers, or (iii) members
38 of any National Securities Exchange registered with the Securities
39 and Exchange Commission under the Securities Exchange Act of
40 1934, as amended, in the course of their business of offering, selling,
41 buying and selling, or otherwise trading in or underwriting securi-
42 ties, as agent, broker, or principal, and activities of any National
43 Securities Exchange so registered, including the establishment of
44 commission rates and schedules of charges;

45 (7) The activities of any State or national ***bank*** *banking*
46 *institution** to the extent that such activities are regulated or su-
47 pervised by officers of the State Government under the Department

48 of Banking and Insurance Act of 1948 (C. 17:1-1 et seq.) or P. L.
49 1970, c. 11 (C. 17:1B-1 et seq.), or the Federal Government under
50 the banking laws of the United States;

51 (8) The activities of any state or Federal savings and loan
52 association to the extent that such activities are regulated or super-
53 vised by officers of the State Government under the Department
54 of Banking and Insurance Act of 1948 (C. 17:1-1 et seq.) or P. L.
55 1970, c. 11 (C. 17:1B-1 et seq.), or the Federal Government under
56 the banking laws of the United States;

57 (9) The activities of any bona fide not for profit professional
58 association, society or board, licensed and regulated by the courts
59 or any other agency of this State, in recommending schedules of
60 suggested fees, rates or commissions for use solely as guidelines
61 in determining charges for professional and technical services; or

62 (10) The activities permitted under the provisions of the Fair
63 Sales Act (C. 56:4-1 et seq.), an act to regulate the retail sale of
64 motor fuels (C. 56:6-1 et seq.), the Unfair Motor Fuels Practices
65 Act (C. 56:6-19 et seq.) and the Unfair Cigarette Sales Act of 1952
66 (C. 56:7-18 et seq.).

67 c. This act shall not apply to any activity directed, authorized or
68 permitted by any law of this State that is in conflict or inconsistent
69 with the provisions of this act, and the enactment of this act shall
70 not be deemed to repeal, either expressly or by implication, any
71 such other law in effect on the date of its enactment.

1 6. The Attorney General shall investigate suspected violations
2 of, and institute such proceedings as are hereinafter provided for
3 violation of the provisions of this act. The Attorney General may
4 direct the county prosecutor of any county in which such pro-
5 ceedings may be brought to aid and assist him in the conduct of
6 such investigations and proceedings.

1 7. Upon a violation of this act by any corporation or association
2 organized under the laws of this State, or upon failure to comply
3 with the terms of a final judgment or decree rendered by a court
4 of this State for a violation of the provisions of this act, or to com-
5 ply with a consent judgment or decree rendered by a court of this
6 State concerning an alleged violation of this act, the Attorney
7 General may institute proper proceedings in a court of competent
8 jurisdiction for the forfeiture of charter rights, franchises, privi-
9 leges and powers, and for the dissolution of the corporation or
10 association, or for the suspension of the privilege to conduct busi-
11 ness within the State. The court, in its discretion, and with due
12 consideration of all relevant factors, including relevant public inter-

13 ests and competitive and economic factors, may order the dis-
14 solution, suspend the privilege to conduct business for a specific
15 period, deny such relief, or provide other appropriate relief. A
16 dissolution shall be conducted in accordance with the procedures
17 specified by law for either voluntary or involuntary dissolution of
18 the particular type of corporation or association.

1 8. Upon a violation of this act by a foreign corporation or as-
2 sociation exercising the privilege of conducting business within this
3 State, or upon a failure to comply with the terms of a final judgment
4 or decree rendered by a court of this State issued for a violation of
5 the provisions of this act, or to comply with a consent judgment or
6 decree rendered by a court of this State concerning an alleged
7 violation of this act, the Attorney General may institute appro-
8 priate proceedings for the revocation or suspension of franchises,
9 privileges, and powers connected with doing business within the
10 State. The court, in its discretion, and with due consideration of
11 all relevant factors, including relevant public interests and com-
12 petitive and economic factors, may order the revocation, suspend
13 the privilege to conduct business for a specified period, deny relief,
14 or provide other appropriate relief. A revocation shall have the
15 same effect as a failure to qualify to do business in this State.

1 9. a. Whenever it shall appear to the Attorney General, either
2 upon complaint or otherwise, that any person shall have engaged in
3 or engages in or is about to engage in any act or practice by this act
4 prohibited or declared to be illegal, or that any person has assisted
5 or participated in any plan, scheme, agreement or combination of the
6 nature described herein, or whenever he believes it to be in the
7 public interest that an investigation be made, he may in his discre-
8 tion either require or permit such person to file with him a state-
9 ment in writing under oath or otherwise as to all the facts and
10 circumstances concerning the subject matter which he believes is to
11 be to the public interest to investigate. The Attorney General
12 may also require such other data and information as he may deem
13 relevant and may make such special and independent investigations
14 as he may deem necessary in connection with the matter. In con-
15 nection with any such investigation the Attorney General, his
16 deputy or other officer designated by him, is empowered to subpoena
17 witnesses, compel their attendance, examine them under oath
18 before himself or a court of record, and require the production of
19 any books or papers which he deems relevant or material to the
20 inquiry. Such power of subpoena and examination shall not abate
21 or terminate by reason of any action or proceeding brought by the

22 Attorney General under this act. No person shall be ***[executed]***
23 *excused* from attending such inquiry in pursuance to the man-
24 dates of a subpoena, or from producing a paper or book, document
25 or any other record, or from being examined or required to answer
26 questions on the ground of failure to tender or pay a witness fee
27 or mileage unless demand therefor is made at the time testimony is
28 about to be taken and as a condition precedent to offering such
29 production or testimony and unless payment thereof be not there-
30 upon made. The provisions for payment of witness fee or mileage
31 shall not apply to any officer, director or person in the employ of
32 any person whose conduct or practices are being investigated.

33 b. If a person subpoenaed to attend such inquiry shall fail to obey
34 the command of the subpoena without good cause, he shall be guilty
35 of a misdemeanor. If a person in attendance upon such inquiry
36 pursuant to subpoena, or if a person required to file with the At-
37 torney General a statement in writing under oath or otherwise,
38 refuses to answer a question or produce evidence of any other kind
39 or make the required statement in writing under oath or otherwise
40 on the ground that he may be incriminated thereby, and if the
41 Attorney General, in a writing directed to the person being ques-
42 tioned orders that person to answer the question or produce the
43 evidence or the statement in writing under oath or otherwise, that
44 person shall comply with the order. After complying, and if but
45 for this section he would have been privileged to withhold the
46 answer given or the evidence produced or the statement in writing
47 under oath or otherwise given, such testimony, evidence or state-
48 ment may not be used against the person in any prosecution for a
49 crime or offense concerning which he gave answer or produced
50 evidence or submitted a written statement under the order of the
51 Attorney General. However, he may nevertheless be prosecuted
52 or subjected to penalty or forfeiture for any perjury, false swearing
53 or contempt committed in answering, or failing to answer, or in
54 producing evidence or failing to produce evidence or in presenting
55 a written statement or failing to do so in accordance with the order.
56 If a person refuses to testify after being granted immunity from
57 prosecution and after being ordered to testify as aforesaid, he
58 may be adjudged in contempt and committed to the county jail
59 until such time as he purges himself of contempt by testifying,
60 producing evidence or presenting a written statement as ordered.
61 The foregoing shall not prevent the Attorney General from in-
62 stituting civil contempt proceedings against any person who
63 violates any of the above provisions.

64 c. It shall be the duty of all public officers, their deputies, as-
65 sistants, clerks, subordinates or employees, and all other persons
66 to render and furnish to the Attorney General, his deputy or other
67 designated representative, when so requested, all information and
68 assistance in their possession or *~~with~~* *within* their power.
69 Any officer participating in such inquiry and any person examined
70 as a witness upon such inquiry who shall disclose to any person
71 other than the Attorney General the name of any witness examined
72 or any other information obtained upon such inquiry, except as so
73 directed by the Attorney General shall be guilty of a misdemeanor.
74 Such inquiry may upon written authorization of the Attorney
75 General be made public.

1 10. a. The Superior Court shall have jurisdiction to prevent and
2 restrain violations of this act. The Attorney General may institute
3 proceedings to prevent and restrain violations. In addition to
4 granting prohibitory injunctions and other restraints for a period
5 and upon terms and conditions necessary to deter the defendant
6 from, and insure against, the committing of a future violation of
7 this act, the court may grant mandatory injunctions reasonably
8 necessary to restore and preserve competition in the trade or com-
9 merce affected by the violation. The court may issue temporary
10 restraining orders or prohibitions and the court may proceed in a
11 summary manner.

12 b. Any person may institute proceedings for injunctive relief,
13 temporary or permanent in the Superior Court against threatened
14 loss or damage to his property or business by a violation of this
15 act, when and under the same conditions and principles as injunctive
16 relief against threatened conduct that will cause loss or damage
17 is granted by courts of equity, under the rules governing such
18 proceedings, and upon the execution of proper bond against
19 damages for an injunction improvidently granted and a showing
20 that the danger of irreparable loss or damage is immediate, a
21 preliminary injunction may issue. If the court issues a permanent
22 injunction, the plaintiff shall be awarded reasonable attorneys'
23 fees, filing fees and reasonable costs of suit. Reasonable costs of
24 suit may include, but shall not be limited to the expenses of dis-
25 covery and document reproduction.

26 c. In addition to injunctive relief authorized pursuant to sub-
27 section a of this section, any person who violates the provisions
28 of this act shall be liable to a penalty of not more than the greater
29 of \$100,000.00 or \$500.00 per day for each and every day of said
30 violation.

1 11. a. Any person or corporation, or any officer or agent thereof,
2 who shall knowingly violate any of the provisions of this act or
3 aid or advise in such violation, or who, as principal, manager,
4 director, stockholder owning 10% or more of the aggregate out-
5 standing capital stock of all classes of the corporation, agent,
6 servant or employee, knowingly does any act comprising a part of
7 such violation, is guilty of a misdemeanor and shall be punished
8 by imprisonment for not more than 3 years or by a fine of not more
9 than \$50,000.00 or both; and if a corporation by a fine of not more
10 than \$100,000.00.

11 b. Any person convicted pursuant to the provisions of subsection
12 a of this section is hereby denied the right and is hereby prohibited
13 from managing or owning any business organization within this
14 State, and from serving as an officer, director, trustee, member of
15 any executive board or similar governing body, principal, manager,
16 stockholder owning 10% or more of the aggregate outstanding
17 capital stock of all classes of any corporation doing business in this
18 State, and all persons within this State, are hereby denied the right
19 to handle the goods of or in any manner deal with, directly or
20 indirectly, those persons companies or corporations under the
21 interdict specified herein. All persons knowingly violating any of
22 the provisions of this section, either directly or indirectly, or aiding
23 or abetting directly or indirectly in any violation of any provisions
24 of this section, shall be deemed guilty of a misdemeanor and shall
25 be fined not less than \$100.00 nor more than \$1,000.00 and shall be
26 punished by imprisonment for not less than 30 days nor more than
27 6 months, and shall forfeit not less than \$1,000.00 for each and
28 every day such violation may continue, to be collected ***[in a**
29 **civil action]*** by a summary proceeding in a court of competent
30 jurisdiction.

1 12. a. Any person who shall be injured in his business or prop-
2 erty by reason of a violation of the provisions of this act may sue
3 therefor and shall recover threefold the damages sustained by him,
4 together with reasonable attorneys' fees, filing fees and reasonable
5 costs of suit. Reasonable costs of suit may include, but shall not
6 be limited to the expenses of discovery and document reproduction.

7 b. The State and any of its political subdivisions and public
8 agencies shall be deemed a person within the meaning of this
9 section. The Attorney General, on behalf of the State or any of its
10 political subdivisions or public agencies, or the political subdivision
11 or public agency at the direction of or with the permission of the
12 Attorney General, may institute an action to recover the damages

13 provided for by this section or by any comparable provisions of
14 Federal law.

1 13. A final judgment or criminal proceeding brought by the State
2 for violation of this act to the effect that a defendant has violated
3 said act shall be prima facie evidence against such defendant in
4 any proceeding brought by any other party against such defendant
5 pursuant to section 12 of this act, as to all matters with respect
6 to which said judgment or decree would be an estoppel as between
7 the parties thereto; provided, that this section shall not apply to
8 consent judgments or decrees entered before any testimony has
9 been taken, or to judgments or decrees entered in actions brought
10 under section 12 of this act.

1 14. Any action brought to enforce the provisions of this act shall
2 be barred unless commenced within 4 years after the cause of action
3 arose, or if the cause of action is based upon a conspiracy in viola-
4 tion of this act, within 4 years after the plaintiff discovered, or by
5 the exercise of reasonable diligence should have discovered the
6 facts relied upon for proof of the conspiracy. No cause of action
7 barred on the effective date of this act shall be revived by this act.
8 For the purpose of this section, a cause of action for a continuing
9 violation is deemed to arise at any time during the period of such
10 violation.

1 15. Whenever any civil or criminal proceeding shall be com-
2 menced by the State to prevent, restrain or punish a violation of
3 this act, but not including an action brought by the State under
4 section 12 of this act, the running of the statute of limitations in
5 respect of every private right of action arising under this act and
6 based in whole or in part on any matter complained of in said
7 proceeding shall be suspended during the pendency thereof and
8 for 1 year thereafter; provided that whenever the running of the
9 statute of limitations in respect of a cause of action arising under
10 section 12 shall be suspended hereunder, any action to enforce
11 such cause of action shall be forever barred unless commenced
12 either within the period of suspension or within 4 years after the
13 cause of action accrued, whichever is later.

1 16. The remedies provided in this act shall be cumulative.

1 17. The Attorney General may cooperate with officials of the
2 Federal Government and the several states in the enforcement of
3 this act.

1 18. This act shall be construed in harmony with ruling judicial
2 interpretations of comparable Federal antitrust statutes and to

3 effectuate, insofar as practicable, a uniformity in the laws of those
4 states which enact it.

1 19. There is hereby appropriated out of the General State Fund
2 to the Department of Law and Public Safety for the purpose of
3 this act the sum of \$100,000.00 for the period ending June 30, 1971,
4 which sum shall be returned to the General State Fund from the
5 sums derived from litigation instituted by the Attorney General
6 under this act or the antitrust laws of the United States, as deter-
7 mined by the Director of the Division of Budget and Accounting.
8 In addition to the sum hereinabove appropriated, there are hereby
9 appropriated as a revolving fund the sums derived as aforesaid
10 for the purpose of paying any additional expenses incurred by the
11 Attorney General in the administration of this act or litigation
12 instituted under the antitrust laws of the United States, provided,
13 however, that the expenditure of such additional sums shall first
14 be approved by the Director of the Division of Budget and Ac-
15 counting and the Legislative Budget and Finance Director in the
16 same manner as transfers of appropriations are approved.

1 20. This act shall take effect immediately.

ASSEMBLY, No. 971

STATE OF NEW JERSEY

INTRODUCED APRIL 23, 1970

By Assemblymen DICKEY, RINALDI, PARKER, KEAN, WILSON, FONTANELLA, MORAITES, HOLLENBECK, TURNER, VANDER PLAAT, EVERS, McDONOUGH, THOMAS, GOLDFARB, CAPUTO, HAELIG, BROWN, DENNIS, KALTENBACHER, RUSSO, VOLK, CONNELL, Assemblywoman MARGETTS, Assemblymen DE KORTE, COSTA, AZZOLINA, DAWES, FAY, LORDI, POLICASTRO, WEIDEL, MACRAE, KRAVARIK and GARIBALDI

Referred to Committee on Law, Public Safety and Defense

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23 or participating in joint underwriting or joint reinsurance arrange-
24 ments, of any insurer, insurance agent, insurance broker, indepen-
25 dent insurance adjuster or rating organization to the extent that
26 such activities are subject to regulation by the Commissioner of
27 Insurance of this State under, or are permitted, or are authorized
28 by, the Department of Banking and Insurance Act of 1948
29 (C. 17:1-1 et seq.), and the Department of Insurance Act of 1970
30 (C. 17:1C-1 et seq.).

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32 for profit corporation, trust or organization established exclusively
33 for religious or charitable purposes, or for both purposes;

34 (6) The activities engaged in by securities dealers, issuers or
35 agents who are (i) licensed by the State of New Jersey under the
36 Uniform Securities Law (C. 49:3-47 et seq.), or (ii) members of
37 the National Association of Securities Dealers, or (iii) members
38 of any National Securities Exchange registered with the Securities
39 and Exchange Commission under the Securities Exchange Act of
40 1934, as amended, in the course of their business of offering, selling,
41 buying and selling, or otherwise trading in or underwriting securi-
42 ties, as agent, broker, or principal, and activities of any National
43 Securities Exchange so registered, including the establishment of
44 commission rates and schedules of charges;

45 (7) The activities of any State or national bank to the extent
46 that such activities are regulated or supervised by officers of the
47 State Government under the Department of Banking and Insurance
48 Act of 1948 (C. 17:1-1 et seq.) or P. L. 1970, c. 11 (C. 17:1B-1
49 et seq.), or the Federal Government under the banking laws of the
50 United States;

51 (8) The activities of any state or Federal savings and loan
52 association to the extent that such activities are regulated or super-
53 vised by officers of the State Government under the Department

54 of Banking and Insurance Act of 1948 (C. 17:1-1 et seq.) or P. L.
55 1970, c. 11 (C. 17:1B-1 et seq.), or the Federal Government under
56 the banking laws of the United States;

57 (9) The activities of any bona fide not for profit professional
58 association, society or board, licensed and regulated by the courts
59 or any other agency of this State, in recommending schedules of
60 suggested fees, rates or commissions for use solely as guidelines
61 in determining charges for professional and technical services; or

62 (10) The activities permitted under the provisions of the Fair
63 Sales Act (C. 56:4-1 et seq.), an act to regulate the retail sale of
64 motor fuels (C. 56:6-1 et seq.), the Unfair Motor Fuels Practices
65 Act (C. 56:6-19 et seq.) and the Unfair Cigarette Sales Act of 1952
66 (C. 56:7-18 et seq.).

67 c. This act shall not apply to any activity directed, authorized or
68 permitted by any law of this State that is in conflict or inconsistent
69 with the provisions of this act, and the enactment of this act shall
70 not be deemed to repeal, either expressly or by implication, any
71 such other law in effect on the date of its enactment.

1 6. The Attorney General shall investigate suspected violations
2 of, and institute such proceedings as are hereinafter provided for
3 violation of the provisions of this act. The Attorney General may
4 direct the county prosecutor of any county in which such pro-
5 ceedings may be brought to aid and assist him in the conduct of
6 such investigations and proceedings.

1 7. Upon a violation of this act by any corporation or association
2 organized under the laws of this State, or upon failure to comply
3 with the terms of a final judgment or decree rendered by a court
4 of this State for a violation of the provisions of this act, or to com-
5 ply with a consent judgment or decree rendered by a court of this
6 State concerning an alleged violation of this act, the Attorney
7 General may institute proper proceedings in a court of competent
8 jurisdiction for the forfeiture of charter rights, franchises, privi-
9 leges and powers, and for the dissolution of the corporation or
10 association, or for the suspension of the privilege to conduct busi-
11 ness within the State. The court, in its discretion, and with due
12 consideration of all relevant factors, including relevant public inter-
13 ests and competitive and economic factors, may order the dis-
14 solution, suspend the privilege to conduct business for a specific
15 period, deny such relief, or provide other appropriate relief. A
16 dissolution shall be conducted in accordance with the procedures
17 specified by law for either voluntary or involuntary dissolution of
18 the particular type of corporation or association.

1 8. Upon a violation of this act by a foreign corporation or as-
2 sociation exercising the privilege of conducting business within this
3 State, or upon a failure to comply with the terms of a final judgment
4 or decree rendered by a court of this State issued for a violation of
5 the provisions of this act, or to comply with a consent judgment or
6 decree rendered by a court of this State concerning an alleged
7 violation of this act, the Attorney General may institute appro-
8 priate proceedings for the revocation or suspension of franchises,
9 privileges, and powers connected with doing business within the
10 State. The court, in its discretion, and with due consideration of
11 all relevant factors, including relevant public interests and com-
12 petitive and economic factors, may order the revocation, suspend
13 the privilege to conduct business for a specified period, deny relief,
14 or provide other appropriate relief. A revocation shall have the
15 same effect as a failure to qualify to do business in this State.

1 9. a. Whenever it shall appear to the Attorney General, either
2 upon complaint or otherwise, that any person shall have engaged in
3 or engages in or is about to engage in any act or practice by this act
4 prohibited or declared to be illegal, or that any person has assisted
5 or participated in any plan, scheme, agreement or combination of the
6 nature described herein, or whenever he believes it to be in the
7 public interest that an investigation be made, he may in his discre-
8 tion either require or permit such person to file with him a state-
9 ment in writing under oath or otherwise as to all the facts and
10 circumstances concerning the subject matter which he believes is to
11 be to the public interest to investigate. The Attorney General
12 may also require such other data and information as he may deem
13 relevant and may make such special and independent investigations
14 as he may deem necessary in connection with the matter. In con-
15 nection with any such investigation the Attorney General, his
16 deputy or other officer designated by him, is empowered to subpœna
17 witnesses, compel their attendance, examine them under oath
18 before himself or a court of record, and require the production of
19 any books or papers which he deems relevant or material to the
20 inquiry. Such power of subpœna and examination shall not abate
21 or terminate by reason of any action or proceeding brought by the
22 Attorney General under this act. No person shall be executed
23 from attending such inquiry in pursuance to the mandates of a
24 subpœna, or from producing a paper or book, document or any other
25 record, or from being examined or required to answer questions on
26 the ground of failure to tender or pay a witness fee or mileage
27 unless demand therefor is made at the time testimony is about to
28 be taken and as a condition precedent to offering such production

29 or testimony and unless payment thereof be not thereupon made.
30 The provisions for payment of witness fee or mileage shall not
31 apply to any officer, director or person in the employ of any person
32 whose conduct or practices are being investigated.

33 b. If a person subpoenaed to attend such inquiry shall fail to obey
34 the command of the subpoena without good cause, he shall be guilty
35 of a misdemeanor. If a person in attendance upon such inquiry
36 pursuant to subpoena, or if a person required to file with the At-
37 torney General a statement in writing under oath or otherwise,
38 refuses to answer a question or produce evidence of any other kind
39 or make the required statement in writing under oath or otherwise
40 on the ground that he may be incriminated thereby, and if the
41 Attorney General, in a writing directed to the person being ques-
42 tioned orders that person to answer the question or produce the
43 evidence or the statement in writing under oath or otherwise, that
44 person shall comply with the order. After complying, and if but
45 for this section he would have been privileged to withhold the
46 answer given or the evidence produced or the statement in writing
47 under oath or otherwise given, such testimony, evidence or state-
48 ment may not be used against the person in any prosecution for a
49 crime or offense concerning which he gave answer or produced
50 evidence or submitted a written statement under the order of the
51 Attorney General. However, he may nevertheless be prosecuted
52 or subjected to penalty or forfeiture for any perjury, false swearing
53 or contempt committed in answering, or failing to answer, or in
54 producing evidence or failing to produce evidence or in presenting
55 a written statement or failing to do so in accordance with the order.
56 If a person refuses to testify after being granted immunity from
57 prosecution and after being ordered to testify as aforesaid, he
58 may be adjudged in contempt and committed to the county jail
59 until such time as he purges himself of contempt by testifying,
60 producing evidence or presenting a written statement as ordered.
61 The foregoing shall not prevent the Attorney General from in-
62 stituting civil contempt proceedings against any person who
63 violates any of the above provisions.

64 c. It shall be the duty of all public officers, their deputies, as-
65 sistants, clerks, subordinates or employees, and all other persons
66 to render and furnish to the Attorney General, his deputy or other
67 designated representative, when so requested, all information and
68 assistance in their possession or with their power. Any officer
69 participating in such inquiry and any person examined as a witness
70 upon such inquiry who shall disclose to any person other than the
71 Attorney General the name of any witness examined or any other

72 information obtained upon such inquiry, except as so directed by
73 the Attorney General shall be guilty of a misdemeanor. Such
74 inquiry may upon written authorization of the Attorney General
75 be made public.

1 10. a. The Superior Court shall have jurisdiction to prevent and
2 restrain violations of this act. The Attorney General may institute
3 proceedings to prevent and restrain violations. In addition to
4 granting prohibitory injunctions and other restraints for a period
5 and upon terms and conditions necessary to deter the defendant
6 from, and insure against, the committing of a future violation of
7 this act, the court may grant mandatory injunctions reasonably
8 necessary to restore and preserve competition in the trade or com-
9 merce affected by the violation. The court may issue temporary
10 restraining orders or prohibitions and the court may proceed in a
11 summary manner.

12 b. Any person may institute proceedings for injunctive relief,
13 temporary or permanent in the Superior Court against threatened
14 loss or damage to his property or business by a violation of this
15 act, when and under the same conditions and principles as injunctive
16 relief against threatened conduct that will cause loss or damage
17 is granted by courts of equity, under the rules governing such
18 proceedings, and upon the execution of proper bond against
19 damages for an injunction improvidently granted and a showing
20 that the danger of irreparable loss or damage is immediate, a
21 preliminary injunction may issue. If the court issues a permanent
22 injunction, the plaintiff shall be awarded reasonable attorneys'
23 fees, filing fees and reasonable costs of suit. Reasonable costs of
24 suit may include, but shall not be limited to the expenses of dis-
25 covery and document reproduction.

26 c. In addition to injunctive relief authorized pursuant to sub-
27 section a of this section, any person who violates the provisions
28 of this act shall be liable to a penalty of not more than the greater
29 of \$100,000.00 or \$500.00 per day for each and every day of said
30 violation.

1 11. a. Any person or corporation, or any officer or agent thereof,
2 who shall knowingly violate any of the provisions of this act or
3 aid or advise in such violation, or who, as principal, manager,
4 director, stockholder owning 10% or more of the aggregate out-
5 standing capital stock of all classes of the corporation, agent,
6 servant or employee, knowingly does any act comprising a part of
7 such violation, is guilty of a misdemeanor and shall be punished
8 by imprisonment for not more than 3 years or by a fine of not more

9 than \$50,000.00 or both; and if a corporation by a fine of not more
10 than \$100,000.00.

11 b. Any person convicted pursuant to the provisions of subsection
12 a of this section is hereby denied the right and is hereby prohibited
13 from managing or owning any business organization within this
14 State, and from serving as an officer, director, trustee, member of
15 any executive board or similar governing body, principal, manager,
16 stockholder owning 10% or more of the aggregate outstanding
17 capital stock of all classes of any corporation doing business in this
18 State, and all persons within this State, are hereby denied the right
19 to handle the goods of or in any manner deal with, directly or
20 indirectly, those persons companies or corporations under the
21 interdict specified herein. All persons knowingly violating any of
22 the provisions of this section, either directly or indirectly, or aiding
23 or abetting directly or indirectly in any violation of any provisions
24 of this section, shall be deemed guilty of a misdemeanor and shall
25 be fined not less than \$100.00 nor more than \$1,000.00 and shall be
26 punished by imprisonment for not less than 30 days nor more than
27 6 months, and shall forfeit not less than \$1,000.00 for each and
28 every day such violation may continue, to be collected in a
29 civil action by a summary proceeding in a court of competent
30 jurisdiction.

1 12. a. Any person who shall be injured in his business or prop-
2 erty by reason of a violation of the provisions of this act may sue
3 therefor and shall recover threefold the damages sustained by him,
4 together with reasonable attorneys' fees, filing fees and reasonable
5 costs of suit. Reasonable costs of suit may include, but shall not
6 be limited to the expenses of discovery and document reproduction.

7 b. The State and any of its political subdivisions and public
8 agencies shall be deemed a person within the meaning of this
9 section. The Attorney General, on behalf of the State or any of its
10 political subdivisions or public agencies, or the political subdivision
11 or public agency at the direction of or with the permission of the
12 Attorney General, may institute an action to recover the damages
13 provided for by this section or by any comparable provisions of
14 Federal law.

1 13. A final judgment or criminal proceeding brought by the State
2 for violation of this act to the effect that a defendant has violated
3 said act shall be prima facie evidence against such defendant in
4 any proceeding brought by any other party against such defendant
5 pursuant to section 12 of this act, as to all matters with respect
6 to which said judgment or decree would be an estoppel as between
7 the parties thereto; provided, that this section shall not apply to

8 consent judgments or decrees entered before any testimony has
9 been taken, or to judgments or decrees entered in actions brought
10 under section 12 of this act.

1 14. Any action brought to enforce the provisions of this act shall
2 be barred unless commenced within 4 years after the cause of action
3 arose, or if the cause of action is based upon a conspiracy in viola-
4 tion of this act, within 4 years after the plaintiff discovered, or by
5 the exercise of reasonable diligence should have discovered the
6 facts relied upon for proof of the conspiracy. No cause of action
7 barred on the effective date of this act shall be revived by this act.
8 For the purpose of this section, a cause of action for a continuing
9 violation is deemed to arise at any time during the period of such
10 violation.

1 15. Whenever any civil or criminal proceeding shall be com-
2 menced by the State to prevent, restrain or punish a violation of
3 this act, but not including an action brought by the State under
4 section 12 of this act, the running of the statute of limitations in
5 respect of every private right of action arising under this act and
6 based in whole or in part on any matter complained of in said
7 proceeding shall be suspended during the pendency thereof and
8 for 1 year thereafter; provided that whenever the running of the
9 statute of limitations in respect of a cause of action arising under
10 section 12 shall be suspended hereunder, any action to enforce
11 such cause of action shall be forever barred unless commenced
12 either within the period of suspension or within 4 years after the
13 cause of action accrued, whichever is later.

1 16. The remedies provided in this act shall be cumulative.

1 17. The Attorney General may cooperate with officials of the
2 Federal Government and the several states in the enforcement of
3 this act.

1 18. This act shall be construed in harmony with ruling judicial
2 interpretations of comparable Federal antitrust statutes and to
3 effectuate, insofar as practicable, a uniformity in the laws of those
4 states which enact it.

1 19. There is hereby appropriated out of the General State Fund
2 to the Department of Law and Public Safety for the purpose of
3 this act the sum of \$100,000.00 for the period ending June 30, 1971,
4 which sum shall be returned to the General State Fund from the
5 sums derived from litigation instituted by the Attorney General
6 under this act or the antitrust laws of the United States, as deter-
7 mined by the Director of the Division of Budget and Accounting.
8 In addition to the sum hereinabove appropriated, there are hereby
9 appropriated as a revolving fund the sums derived as aforesaid

10 for the purpose of paying any additional expenses incurred by the
11 Attorney General in the administration of this act or litigation
12 instituted under the antitrust laws of the United States, provided,
13 however, that the expenditure of such additional sums shall first
14 be approved by the Director of the Division of Budget and Ac-
15 counting and the Legislative Budget and Finance Director in the
16 same manner as transfers of appropriations are approved.

1 20. This act shall take effect immediately.

SENATE AMENDMENTS TO
ASSEMBLY, No. 971

STATE OF NEW JERSEY

ADOPTED MAY 7, 1970

Amend page 3, section 5, line 10, omit "directly", insert "directed".

Amend page 3, section 5, line 20, after "Commissioners", insert ", the Department of Transportation, the Federal Power Commission, the Federal Communications Commission, the Federal Department of Transportation or the Interstate Commerce Commission".

Amend page 3, section 5, line 45, omit "bank", insert "banking institution".

Amend page 5, section 9, line 22, omit "executed", insert "excused".

Amend page 6, section 9, line 68, omit "with", insert "within".

Amend page 8, section 11, lines 28 and 29, omit "in a civil action".

RECOMMENDATIONS

to the

1970 SESSION OF THE NEW JERSEY LEGISLATURE

concerning

LEGISLATION WHICH MIGHT BE ENACTED TO
CURB THE POWER AND INFLUENCE OF
ORGANIZED CRIME IN NEW JERSEY
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FREDERICK B. LACEY
United States Attorney

For the District of New Jersey

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1970

January 20, 1970

IV. INFILTRATION AND CONTROL OF LEGITIMATE
BUSINESS BY CRIMINAL ELEMENTS

The purpose of this chapter is to suggest certain legislative approaches which might be considered in an effort to prevent criminal elements from infiltrating and controlling "legitimate" businesses.

It is now commonly recognized that the ownership and control of many businesses is falling into the hands of Organized Crime and that such businesses are often characterized by price fixing, market allocation, concerted refusals to deal, and efforts to monopolize. Attorney General Mitchell has recognized these anti-competitive characteristics of criminal control of businesses and has stated the following with respect thereto: ". . . in its legitimate business enterprises, Organized Crime frequently demands higher prices for its goods and services than is generally offered on the market place, and provides a lower quality of products. Because of its internal structure, there is little doubt that markets are divided among gangsters, and that prices are fixed. In addition, the close internal structure of Organized Crime makes it quite clear that in almost every legitimate enterprise owned by an organization, a gangster fits in some way into the overall crime conspiracy."

In order to curb these anti-competitive activities of crime-controlled businesses, the Legislature should consider passage of state anti-trust laws similar to the Sherman and Clayton Acts. The language of state anti-trust laws should track that of the federal statutes as closely as possible so that courts may be encouraged to draw upon federal case law as precedent. Pertinent provisions of the foregoing federal statutes which should be considered include Sections 1, 2, 13, 14 and 18 of Title 15, United States Code.

In addition to its use as a means of curbing the anti-competitive activities of crime-controlled businesses, the passage of an effective anti-trust law would serve the following purposes:

(1) To investigate businesses where suspected mob infiltration is believed to exist.

(2) To attack the property interests of Organized Crime.*

The majority of states have statutes prohibiting contracts, combinations and conspiracies in restraint of trade; and several states expressly prohibit monopolies. An example of such legislation is the comprehensive Hawaii statute, a copy of which is annexed. To date, New Jersey has no such laws, although several have been proposed.** I agree with Assemblyman Dickey that now is the time for New Jersey to adopt anti-trust legislation. See *Newark Star Ledger*, December 17, 1969. State anti-trust statutes have in most instances been held valid. For instance, a New York court has held that

“the only discernible limits upon state action affecting interstate commerce, where similar and consistent federal legislation exists, are: (1) That some local interest be involved and; (2) That no federal agency has acted with respect to the particular matter being considered by the state agency.” *Leader Theatre Corp. v. Randforce Amusement Corp.*, 58 N.Y.S. 2nd 304, 308 (Sup. Ct. N.Y. Cnty. 1948).

To be effective, anti-trust legislation must include provisions permitting the Attorney General to compel testimony of individuals with information or knowledge of possible violations of the anti-trust laws. Provisions such as this would be an excellent means of investigating industries where indications of infiltrations by Organized Crime exist. I suggest the enactment of a provision similar to Section 28 of the Tentative Draft of the Uniform State Antitrust Act, which provides that no person is excused from attending or testifying or producing documents in any proceeding or investigation brought by the Attorney General, but grants immunity from prosecution for any person so testifying or producing documents.***

Another approach which might be considered for the use in combating the infiltration of “legitimate” business by

* See also recommendations for establishment of the State Lottery, *supra*.

** See, A-172 and A-230 (1969 Session).

*** See Section 21 of the annexed Hawaii statute. New Jersey's new immunity statute (N. J. S. A. 2A:81-17.3) would be inapplicable to such an investigation by the Attorney General since it applies only to “any criminal proceeding before a court or grand jury.”

Organized Crime is by the enactment of laws similar to those existing in Florida which attack this infiltration directly. Sections 932.58-932.60 of the Florida Statutes provide as follows:

“932.58 Forfeiture of charter and revocation of permit.—The attorney general is authorized to institute civil proceedings in the circuit court to forfeit the charter of a corporation organized under the laws of this state or to revoke the permit authorizing a foreign corporation to conduct businesses in this state, when:

“(a) Any of the corporation officers or any other person controlling the management or operation of such corporation, with the knowledge of the president and a majority of the board of directors or under such circumstances wherein the president and a majority of the directors should have knowledge, is a person or persons engaged in activities such as organized violent revolutionary or unlawful activity aimed at the overthrow of the Government of the State of Florida or any of its political subdivisions, institutions or agencies, organized homosexuality, organized crimes against nature, organized prostitution, organized gambling, organized narcotics, organized extortion or organized embezzlement or who is connected directly or indirectly with organizations, syndicates or criminal societies engaging in such; or

“(b) A director, officer, employee, agent or stockholder acting for, through or on behalf of such corporation has, in conducting the corporation's affairs, purposely engaged in a persistent course of violent revolutionary or unlawful activity aimed at the overthrow of the Government of the state of Florida or any of its political subdivisions, institutions or agencies, homosexuality, crimes against nature, intimidation and coercion, bribery, prostitution, gambling, extortion, embezzlement, unlawful sale of narcotics or other such illegal conduct, with the knowledge of the president and majority of the board of directors or under such circumstances wherein the president and a majority of the directors should have knowledge, with the intent to compel or induce other persons, firms or corporations to deal with such corporation or engage in any such illegal conduct, and

“(c) For the prevention of future illegal conduct of the same character, the public interest requires the

charter of the corporation to be forfeited and the corporation to be dissolved or the permit to be revoked.

“932.59 Enjoining operation of a business. The attorney general is authorized to institute civil proceedings in the circuit court to enjoin the operation of any business other than a corporation, including a partnership, joint venture or sole proprietorship, when:

“(a) Any person in control of any such business, who may be a partner in a partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any such business, or a person who, in fact, exercises control over the operations of any such business, has, in conducting its business affairs, purposely engaged in a persistent course of violent revolutionary or unlawful activity aimed at the overthrow of the Government of the state of Florida or any of its political subdivisions, institutions or agencies, homosexuality, crimes against nature, intimidation, coercion, bribery, prostitution, gambling, extortion, embezzlement, unlawful sale of narcotics or other such illegal conduct with the intent to compel or induce other persons, firms or corporations to deal with such business or engage in any such illegal conduct, and

“(b) That for the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.”

Assemblyman-Elect Martin E. Kravarik has prefiled a bill (A-91) for consideration by this Legislature, which is basically identical to the Florida statute (with the exception of the wise omission of references to homosexuality and crimes against nature). He has also prefiled A-92, which would apply these provisions to “banks, financial institutions and insurance companies.”

While such statutes have a laudatory purpose, they may well be struck down by the courts for failure to define that which they seek to attack. For instance, there is no definition of such terms in sub-section 932.58(a) as “organized” or “connected.”

We have inquired of the office of Earl Faircloth, Attorney General of the State of Florida, through Assistant Attorneys General George R. Georgieff and Arden Siegendorf, as to what action has been taken by his office pursuant to the

new Florida legislation. They have advised that twenty-one suits have been filed in state courts there, that two of them have been dismissed due to rectification of the corporation's association with Organized Crime and that a third has been dismissed without prejudice “upon a technicality.”* In at least one matter (*State Ex rel Earl Faircloth v. Aztec Motel, Inc., et al.*, Cir. Ct., Dade County, Docket #69-17423), the trial court, per Judge John Kehoe, has denied the defendants' motion to dismiss the complaint on constitutional grounds. A copy of the memorandum of law filed on behalf of the State of Florida concerning that motion is annexed hereto, and I refer you to it for a thorough analysis of the constitutional issues.** I strongly recommend, however, that any New Jersey counterpart of the Florida legislation contain a section of definitions as clear and precise as possible. Such a format would be consistent with that employed in modern statutory drafting, and would serve here to safeguard against constitutional attacks based upon alleged vagueness.

As noted previously, Mr. Kravarik's bill, A-92, would establish “Florida type” legislation against banks, financial institutions and insurance companies. The Legislature might also consider other types of legislation directed at specific industries. For instance, the California Insurance Code includes a provision permitting the commissioner to decline to grant, or to suspend or revoke, a certificate of authority to do business “If any officer or director of such holder has been convicted on, or pleaded guilty or nolo contendere to, an indictment or information in any jurisdiction charging a felony for theft, larceny, mail fraud, or violation of any corporate securities statute or any insurance statute.” 42 Cal. Code 704.5. See also N. J. S. A. 17:17-10, which permits New Jersey's Commissioner of Banking and

* This latter suit is to be re-filed soon.

** Defendants to one of the Florida state court actions have commenced a constitutional attack upon these statutes via a collateral federal proceeding. In the case of *Sam Green et al. v. Faircloth*, S. D. Fla. Docket #69-1306 Civ. C. A., these defendants have moved before federal Judge Clyde Atkins for an order conveying a request to Chief Judge Brown of the United States Court of Appeals for the Fifth Circuit that the latter empanel a three-judge federal court to determine the constitutionality of this Florida legislation, pursuant to 28 U. S. C. Sec. 2281. Judge Atkins has conveyed the request sought for; however, the three-judge court has not yet been empaneled. Proceedings in the state case against Sam Green, et al., have been stayed upon the consent of the State of Florida, therefore no injunction against the prosecution of that case was entered by the federal court.

Insurance to "refuse to issue a certificate of authority if he finds that any of the company's directors or officers has been convicted of a crime involving fraud, dishonesty, or like moral turpitude or that said persons are not persons of good character and integrity."

As with legislation designed to exclude criminals from the labor movement, *supra*, this type of statute should be of sufficient scope to accomplish its purpose. The designated crimes should be extensive, including all types which reasonably relate to the fitness of a person to be associated with the particular industry. The persons covered should include not only officers and directors but agents, employees, substantial stockholders (perhaps 10% holders) and persons who in fact exercise significant influence over the company's operation. The issuing authority's power should include those of suspension and revocation of certificates previously granted as well as that of initial refusal. Industries such as banking and insurance where the funds of others are directly entrusted to the company, and where the State thus has a clear interest, particularly lend themselves to legislation directly excluding convicted criminals.

In a related area, the Legislature might consider broadening the extortion laws to cover situations where Organized Crime forces legitimate businessmen to buy the goods and use the services of crime-controlled businesses by the use of threats and violence. Organized Crime must often resort to threats or violence in order to sell its goods and services because they are offered at prices higher than those generally prevailing in the market place. If these practices are outlawed, the risk in attempting to market such goods and services would tend to discourage mob investment in "legitimate" businesses. To effect this, the Legislature might consider amending or supplementing N. J. S. A. 2A:105-4.

CONCLUSION

To date, little has been done on either the State or Federal levels to attack the infiltration of "legitimate" businesses by criminal elements. The way is open, therefore, for thoughtful experimentation in this area through, *inter alia*, the passage of such legislation as that reviewed above.

V. THE GARBAGE INDUSTRY

The New Jersey State Commission of Investigation, in a report to Governor Hughes and the Legislature, dated October 7, 1969, indicated that organized criminal elements are moving into the garbage collection and disposal industry in New Jersey. Our own investigations confirm this.*

The major tools of this movement are predicated upon Organized Crime's ability to control bidding on garbage contracts, its control of prime dumping sites, and its working relationship with certain union leaders.

In April, 1969, Assembly Bill Number 919 [A-126, 1970] was introduced in the Legislature. Under the provisions of this bill, the garbage industry would essentially become a public trust and be regulated by the Public Utilities Commission.

Collusive bidding and the other methods of organized criminal encroachment into the garbage industry would be severely limited by proper administration of A-126 (1970), and by passage of other legislation that would place the health aspects of garbage collection and disposal under the regulation of the State Department of Health. I favor such legislation.

I also believe that additional legislation is advisable, directed at enabling municipalities to operate their own collection facilities, thereby lessening vulnerability to collusive pressure and price rigged increases in contracts. This requires that the state make available public dumping sites in strategic areas of New Jersey. These sites could be used by municipalities, with the major cost of maintenance being passed onto the taxpayers of the municipalities. It should be noted that the cost to the taxpayers under such an arrangement could be significantly lower than present rates.

* Note also recent hearings conducted by New York's State Investigation Commission into Organized Crime's ties with the garbage disposal business in Yonkers, New York (*New York Times*, December 19, 1969).