

5:12-102 et al; 52:13D-13 et al

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: ¹⁹⁸¹~~1996~~ CHAPTER: 142

NJSA: 5:12-102 et al; 52:13D-13 et al ("Conflict of Interest Law" —casino employment—various amendments)

BILL NO: S3041

SPONSOR(S): Merlino

DATE INTRODUCED: January 22, 1981

COMMITTEE: ASSEMBLY: ___

SENATE: ___

AMENDED DURING PASSAGE: Yes Amendment denoted by asterisks. Substituted for A3073 (not attached since identical to S3041)

DATE OF PASSAGE: ASSEMBLY: February 2, 1981 Re-enacted 5-4-81

SENATE: January 26, 1981 Re-enacted 5-4-81

DATE OF APPROVAL: May 14, 1981

FOLLOWING ARE ATTACHED IF AVAILABLE:

SPONSORS STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: No

FISCAL NOTE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Court case mentioned in veto message: Singer, Levy, Brody, et als. Vs. State—attached.

142
S. 14-81
81
[OFFICIAL COPY REPRINT]

SENATE, No. 3041

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1981

By Senator MERLINO

(Without Reference)

AN ACT concerning casino activity and the conduct of certain elected and appointed public officers and employees as it relates thereto, amending and supplementing P. L. 1971, c. 182, amending P. L. 1977, c. 110, P. L. 1980, c. 28 and P. L. 1980, c. 69 and repealing section 2 of P. L. 1980, c. 79.

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

1 1. Section 102 of P. L. 1977, c. 110 (C. 5:12-102) is amended
2 to read as follows:

3 102. Junkets and Complimentary Services. a. No junkets may
4 be organized or permitted except in accordance with the provisions
5 of this act. No person may act as a junket representative except
6 in accordance with this section. For purposes of this section, the
7 term "junket representative" shall mean any person who is re-
8 sponsible for or directly engaged in the creation, organization, or
9 operation of a junket, regardless of whether or not such junket is
10 engaged in or organized within the State of New Jersey.

11 b. A junket representative shall be licensed as a casino key em-
12 ployee in accordance with the provisions of this act; provided,
13 however, that said licensee need not be a resident of this State.
14 No casino licensee may employ or otherwise engage a junket rep-
15 resentative who is not so licensed.

16 c. A casino licensee shall be responsible for the conduct of any
17 junket representative associated with it and for the terms and
18 conditions of any junket engaged in on its premises, regardless of
19 the employment status of any junket representative associated
20 therewith.

21 d. Each casino licensee shall either:

22 (1) Submit to the commission, in accordance with its rules, a
23 report in accordance of any junket which shall include the names of

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

24 the participants, the terms of the junket, the origin and dates of
25 the junket, and such other information as may be required by the
26 commission, including, without limitation, acknowledgments by the
27 participants that they understand the terms of the particular
28 junket; or

29 (2) Submit to the commission, in accordance with its rules,
30 proposals for junkets, which proposals may be approved by the
31 commission for continued use upon the condition that no material
32 aspect of any proposal will be changed except as to participants
33 and that quarterly reports regarding such junkets shall be sub-
34 mitted to the commission, including such information as it may
35 require.

36 e. A casino licensee shall be responsible for any violation or
37 deviation from the terms of a junket. Notwithstanding any other
38 provisions of this act, the commission may, after hearings in ac-
39 cordance with this act, order restitution to junket participants,
40 assess penalties for such violations or deviations, prohibit future
41 junkets by the casino licensee or junket representatives, and order
42 such further relief as it deems appropriate.

43 f. Each casino licensee shall maintain a regulated complimentary
44 service account and shall submit a quarterly report to the commis-
45 sion based upon such account and covering all complimentary
46 services offered or engaged in by the licensee during the immedi-
47 ately preceding quarter. Such reports shall include identification
48 of the regulated complimentary services and their respective costs,
49 the number of persons by category of service who received same,
50 and such other information as the commission may require.

51 g. As used in this subsection "person" means any State officer or
52 employee subject to financial disclosure by law or executive order
53 and any other State officer or employee with responsibility for
54 matters affecting **[gambling]** *casino activity*; any special State
55 officer or employee with responsibility for matters affecting **[gam-**
56 **bling]** *casino activity*; the Governor; any member of the Legis-
57 lature or full-time member of the Judiciary; any full-time profes-
58 sional employee of the Office of the Governor, **[the Administrative**
59 **Office of the Courts,]** or the Legislature; the head of a principal
60 department; the assistant or deputy heads of a principal depart-
61 ment, including all assistant and deputy commissioners; the head
62 of any division of a principal department; any member of the
63 governing body, or the municipal judge or the municipal attorney
64 of a municipality wherein a casino is located; any member of or
65 attorney for the planning board or zoning board of adjustment of
66 a municipality wherein a casino is located, or any professional

67 planner or consultant regularly employed or retained by such plan-
68 ning board or zoning board of adjustment.

69 No casino applicant or licensee shall provide directly or indi-
70 rectly to any person, any complimentary service or discount which
71 is other than such service or discount that is offered to members
72 of the general public in like circumstance.

1 2. Section 2 of P. L. 1971, c. 182 (C. 52:13D-13) is amended to
2 read as follows:

3 2. As used in this act, and unless a different meaning clearly
4 appears from the context, the following terms shall have the fol-
5 lowing meaning:

6 a. "State agency" means any of the principal departments in
7 the Executive Branch of the State Government, and any division,
8 board, bureau, office, commission or other instrumentality within
9 or created by such department, the Legislature of the State and any
10 office, board, bureau or commission within or created by the Legis-
11 lative Branch, and any independent State authority, commission,
12 instrumentality or agency. A county or municipality shall not be
13 deemed an agency or instrumentality of the State.

14 b. "State officer or employee" means any person, other than
15 a member of the Legislature, holding an office or employment in
16 a State agency, excluding special State officers or employees as
17 defined in subsection e. of this section.

18 c. "Member of the Legislature" means any person elected to
19 serve in the General Assembly or the Senate.

20 d. "Head of a State agency" means (1) in the case of the
21 Executive Branch of government, the department head or, if the
22 agency is not assigned to a department, the Governor, and (2) in
23 the case of the Legislative Branch, the chief presiding officer of
24 each House of the Legislature.

25 e. "Special State officer or employee" means (1) any person
26 holding an office or employment in a State agency for which office
27 or employment no compensation is authorized or provided by law,
28 or no compensation other than a sum in reimbursement of expenses,
29 whether payable per diem or per annum, is authorized or provided
30 by law [and] *and*; (2) any person, not a member of the Legisla-
31 ture, holding a part-time elective or appointive office or employment
32 in the Legislative branch* [; and (3) any member of an interstate
33 agency representing the State]*.

34 f. "Person" means any natural person, association or corpo-
35 ration.

36 g. "Interest" [in a corporation means the ownership or control
37 of more than 10% of the stock of the corporation.] means (1) the

38 *ownership or control of more than 10% of the profits or assets of*
 39 *a firm, association, or partnership, or more than 10% of the stock*
 40 *in a corporation for profit other than a professional service cor-*
 41 *poration organized under the "Professional Service Corporation*
 42 *Act" (N. J. S. 14A:17-1 et seq.); or (2) the ownership or control*
 43 *of more than 1% of the profits or assets of a firm, association, or*
 44 *partnership, or more than 1% of the stock in any corporation,*
 45 *which is the holder of, or an applicant for, a casino license or in*
 46 *any holding or intermediary company with respect thereto, as de-*
 47 *finied by the "Casino Control Act," P. L. 1977, c. 110 (C. 5:12-1*
 48 *et seq.). The provisions of this act governing the conduct of*
 49 *individuals are applicable to shareholders, associates or profes-*
 50 *sional employees of a professional service corporation regardless*
 51 *of the extent or amount of their shareholder interest in such a*
 52 *corporation.*

53 h. "Cause, proceeding, application or other matter" means a
 54 specific cause, proceeding or matter and does not mean or include
 55 determinations of general applicability or the preparation or review
 56 of legislation which is no longer pending before the Legislature or
 57 the Governor.

58 i. "Member of the immediate family" of any person means the
 59 person's spouse, child, parent or sibling residing in the same
 60 household.

1 3. Section 5 of P. L. 1971, c. 182 (C. 52:13D-16) is amended to
 2 read as follows:

3 5. a. No special State officer or employee, nor any partnership,
 4 firm or corporation in which he has an interest, nor any partner,
 5 officer or employee of any such partnership, firm or corporation,
 6 shall represent, appear for, or negotiate on behalf of, or agree to
 7 represent, appear for or negotiate on behalf of, any person or
 8 party other than the State in connection with any cause, proceeding,
 9 application or other matter pending before the particular office,
 10 bureau, board, council, commission, authority, agency, fund or
 11 system in which such special State officer or employee holds office
 12 or employment.

13 [b. No special State officer or employee shall accept employment
 14 with any holder of, or applicant for, a casino license or any
 15 holding or intermediary company with respect thereto, nor shall
 16 any special State officer or employee nor any partnership, firm or
 17 corporation with which such special State officer or employee is
 18 associated, nor any partner, officer, or employee of such partner-
 19 ship, firm or corporation accept employment as an agent or attorney
 20 to represent, appear for, or negotiate on behalf of any holder of,

21 or applicant for, a casino license or any holding or intermediary
 22 company with respect thereto, in connection with any cause, appli-
 23 cation or matter.】

24 【c.】 b. No State officer or employee or member of the Legislature,
 25 nor any partnership, firm or corporation in which he has an interest,
 26 nor any partner, officer or employee of any such partnership, firm
 27 or corporation, shall represent, appear for, or negotiate on behalf
 28 of, or agree to represent, appear for, or negotiate on behalf of, any
 29 person or party other than the State in connection with any cause,
 30 proceeding, application or other matter pending before any State
 31 agency; provided, however, this subsection shall not be deemed to
 32-33 prohibit a member of the Legislature from making an inquiry for
 34 information on behalf of a constituent, if no fee, reward or other
 35 thing of value is promised to, given to or accepted by the member of
 36 the Legislature, whether directly or indirectly nor shall anything
 37 contained herein be deemed to prohibit any such partnership, firm
 38 or corporation from appearing on its own behalf.

39 *c. Nothing contained in this section shall be deemed to prohibit*
 40 *any legislator, or any State officer or employee or special State*
 41 *officer or employee from representing, appearing for or negotiating*
 42 *on behalf of, or agreeing to represent, appear for, or negotiate on*
 43 *behalf of, any person or party other than the State in connection*
 44 *with any proceeding pending before any court of record of this*
 45 *State, any proceeding in regard to a claim for compensation arising*
 46 *under chapter 15 of Title 34 of the Revised Statutes (Workers'*
 47 *Compensation), any proceeding in connection with the determina-*
 48 *tion or review of transfer inheritance or estate taxes, any proceed-*
 49 *ing in connection with the filing of corporate or other documents*
 50 *in the office of the Secretary of State, any proceeding before the*
 51 *Division of Civil Rights, the New Jersey State Board of Mediation*
 52 *or the New Jersey Public Employment Relations Commission, the*
 53 *Unsatisfied Claim and Judgment Fund Board solely for the pur-*
 54 *pose of filing a notice of intention pursuant to P. L. 1952, c. 174, s. 5*
 55 *(C. 39:6-65), or any successor thereof or any proceeding on behalf*
 56 *of a county, municipality or school district, or any authority, agency*
 57 *or commission of any thereof except where the State is an adverse*
 58 *party in the proceeding and provided he is not holding any office or*
 59 *employment in the State agency in which any such proceeding is*
 60 *pending.*

1 4. (New section) a. As used in this section "person" means any
 2 State officer or employee subject to financial disclosure by law or
 3 executive order and any other State officer or employee with re-
 4 sponsibility for matters affecting casino activity; any special State

5 officer or employee with responsibility for matters affecting casino
 6 activity; the Governor; any member of the Legislature or full time
 7 member of the Judiciary; any full time professional employee of
 8 the Office of the Governor, or the Legislature; the head of a prin-
 9 cipal department; the assistant or deputy heads of a principal
 10 department, including all assistant and deputy commissioners; the
 11 head of any division of a principal department; any member of the
 12 governing body, or the municipal judge or the municipal attorney
 13 of a municipality wherein a casino is located; any member of or
 14 attorney for the planning board or zoning board of adjustment of
 15 a municipality wherein a casino is located, or any professional
 16 planner, or consultant regularly employed or retained by such
 17 planning board or zoning board of adjustment.

18 b. No State officer or employee, *~~nor any special State officer or~~
 19 employee without responsibility for matters affecting casino activ-
 20 ity,~~]~~* nor any person, nor any member of the immediate family of
 21 any State officer or employee, or person, nor any partnership, firm
 22 or corporation with which any such State officer or employee or
 23 person is associated or in which he has an interest, nor any partner,
 24 officer, director or employee while he is associated with such part-
 25 nership, firm, or corporation, shall hold, directly or indirectly,
 26 an interest in, or hold employment with, or represent, appear for,
 27 or negotiate on behalf of, any holder of, or applicant for, a casino
 28 license, or any holding or intermediary company with respect
 29 thereto, in connection with any cause, application, or matter. *No
 29A *special State officer or employee without responsibility for matters*
 29B *affecting casino activity, excluding those serving in the Depart-*
 29C *ments of Education, Health, Higher Education and Human Services,*
 29D *shall hold, directly or indirectly, an interest in, or hold employment*
 29E *with, or represent, appear for, or negotiate on behalf of, any holder*
 29F *of, or applicant for, a casino license, or any holding or intermediary*
 29G *company with respect thereto, in connection with any cause, appli-*
 29H *cation, or matter.**

30 c. No person or any member of his immediate family, nor any
 31 partnership, firm or corporation with which such person is asso-
 32 ciated or in which he has an interest, nor any partner, officer,
 33 director or employee while he is associated with such partnership,
 34 firm or corporation, shall, within 2 years next subsequent to the
 35 termination of the office or employment of such person, hold,
 36 directly or indirectly, an interest in, or hold employment with, or
 37 represent, appear for or negotiate on behalf of, any holder of, or
 38 applicant for, a casino license in connection with any cause, appli-
 39 cation or matter, or any holding or intermediary company with

40 respect to such holder of, or applicant for, a casino license in
 41 connection with any phase of casino development, permitting,
 42 licensure or any other matter whatsoever related to casino activity.
 43 Nothing herein contained shall alter or amend the post-employment
 44 restrictions applicable to members and employees of the Casino
 45 Control Commission and employees and agents of the Division of
 46 Gaming Enforcement pursuant to subsection b. (2) of section 59
 47 and to section 60 of P. L. 1977, c. 110 (C. 5:12-59b. (2) and C.
 48 5:12-60).

49 d. The Joint Legislative Committee on Ethical Standards and the
 50 Executive Commission on Ethical Standards, as appropriate, shall
 51 forthwith determine and publish, and periodically update, a list of
 52 those positions in State Government with responsibility for matters
 53 affecting casino activity.

54 e. No person shall solicit or accept, directly or indirectly, any
 55 complimentary service or discount from any casino applicant or
 56 licensee which he knows or has reason to know is other than a
 57 service or discount that is offered to members of the general public
 58 in like circumstance.

59 f. No person shall influence, or attempt to influence, by use of his
 60 official authority, the decision of the commission or the investiga-
 61 tion of the division in any application for licensure or in any pro-
 62 ceeding to enforce the provisions of this act or the regulations of the
 63 commission. Any such attempt shall be promptly reported to the
 64 Attorney General; provided, however, that nothing in this section
 65 shall be deemed to proscribe a request for information by any
 66 person concerning the status of any application for licensure or any
 67 proceeding to enforce the provisions of this act or the regulations
 68 of the commission.

69 g. Any person who willfully violates the provisions of this section
 70 is a disorderly person and shall be subject to a fine not to exceed
 71 \$500.00 or imprisonment not to exceed 6 months, or both.

1 5. Section 10 of P. L. 1980, c. 28 is amended to read as follows:

2 10. This act shall take effect immediately, but shall remain
 3 inoperative until Senate Bill No. [1369] 3041 or Assembly Bill
 4 No. 3073 of 1981, now pending in the Legislature, is enacted into
 5 law.

1 6. Section 5 of P. L. 1980, c. 69 (C. 5:12-117.1) is amended to
 2 read as follows:

3 5. a. No applicant or person or organization licensed by or regis-
 4 tered with the commission shall employ or offer to employ any
 5 person who is prohibited from accepting employment from a

6 licensee or applicant or any holding or intermediary company
7 under subsection b. of section 5 of P. L. 1971, c. 182 (C. 52:13D-16)
8 or section 3 of P. L., c. (now pending before the Legis-
9 lature as Senate Bill No. **[1369]** 3041 or *Assembly Bill No. 3073*
10 *of 1981*).

11 b. An applicant or person or organization who violates the provi-
12 sions of this section is guilty of a crime of the fourth degree.

1 7. Section 2 of P. L. 1980, c. 79 (C. 52:13D-17.1) is repealed.

1 8. This act shall take effect immediately.

STATEMENT

This bill amends and supplements the "New Jersey Conflicts of Interest Law" as it was revised by P. L. 1980, c. 79.

Under this bill, the following are prohibited from holding an interest in, holding employment with, or representing a casino licensee, an applicant for a casino license, or the holding or intermediary company of a licensee or applicant:

1. State officers and employees;
2. Special State officers and employees;
3. Certain other officers and employees;
4. The immediate family of a State officer and employee, a special State officer and employee with responsibility for matters affecting casino activity, and the other officers and employees.
5. Any partnership, firm, or corporation of a State officer or employee or of the other officers or employees.

Any partnership, firm, or corporation of a special State officer or employee who has no responsibility for matters affecting casino activity is permitted to represent a casino licensee, an applicant for a casino license, or any holding or intermediary company of either.

The bill also imposes a 2-year post-employment prohibition on holding an interest in, holding employment with, and representing a casino licensee, applicant, or any holding or intermediary company of either. This post-employment prohibition applies only to specified officers and employees, their immediate family, and any partnerships, firms, or corporations with which they are associated.

The bill also amends P. L. 1980, c. 159 to make consistent the provisions of that act with those of the New Jersey Conflicts of Interest Law with respect to the prohibition of delivery of complimentary services by a casino to certain public officers and employees, and makes the operative date of P. L. 1980, c. 159 conditional upon the enactment of this bill.

S 3041 (1981)

March 23, 1981

SENATE BILL NO. 3041

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 3041 with my objections.

This is the latest in a series of "casino ethics" bills which would impose restrictions on the employment of present or former State officials by casinos. Last summer I permitted P.L. 1980, c. 79, to become law without my signature because needed reforms of the Casino Control Commission were conditioned on its enactment. It amended the State Conflicts of Interest Law, N.J.S.A. 52:13D-1 et seq., to prohibit all State officers required to file financial disclosure statements, all Special State officers, and their business associates, from holding an interest in, representing or being employed by casino licensees or applicants or their holding companies, both during their terms of office and for two years after. One hundred eighty Special State officers, volunteer members of the State's various boards and commissions, resigned rather than subject themselves and their firms to its strictures. Enforcement of the law was enjoined by the Superior Court in December 1980 on the grounds that the restrictions on State officials with no responsibility for casino matters had no rational basis and were, therefore, unconstitutional. The period for appeal of that decision has been extended pending my action on this bill.

Last fall the Legislature passed and I conditionally vetoed Senate Bill No. 1369. That bill extended the group of State officials affected by the restrictions and included their immediate families but narrowed the nature of those restrictions, particularly on the firms of present or former officials. I continued to be dissatisfied, however, with the restrictions on all Special State officers which would act as a significant deterrent to public service, and I recommended that the affected group of officials be limited to those with responsibility for casino matters. My conditional veto was amended in the Senate but not put up for final passage. In its stead the present bill was introduced.

This bill represents some improvement insofar as the restrictions on former officials are limited to those who had responsibility for casino matters. It does not apply that limitation to serving State officials, however, and in particular it harshly and unnecessarily affects members of interstate agencies representing New Jersey and agencies and boards in the fields of health, education and welfare. This group of officials serves on such key bodies as the Port Authority of New York and New Jersey, the Palisades Interstate Park Commission, the State Board of Education, and the boards of trustees of the various state colleges and mental health institutions, which do not in any way concern themselves with casino matters. I do not wish to discourage public service in these vital positions.

Accordingly, I am returning Senate Bill No. 3041 with the following recommendations for amendment:

Page 3, Section 2, Line 30: After "law" insert "and"

Page 3, Section 2, Lines 32 and 33: After "branch" delete in their entirety and insert "."

Page 6, Section 4, Lines 18 and 19: After "," delete in their entirety

Page 6, Section 4, Line 20: Delete "ity,"

Page 6, Section 4, Line 29: After "." insert "No special State officer or employee without responsibility for matters affecting casino activity, excluding those serving in the Departments of Education, Health, Higher Education and Human Services, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter.

Respectfully,
/s/ Brendan Byrne
GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

MAY 14, 1981

PATRICK SWEENEY

Governor Brendan Byrne today signed S-3041, sponsored by Senator Joseph P. Merlino (D-Mercer), known as the "casino ethics" bill, which imposes restraints on Special State officers (part-time members of boards or commissions) who work for or represent casinos, while extending those restraints to a broader group of full-time State officials.

The bill restricts the Governor and all professional members of his staff; Legislators and all professional staff members; all State officers who file financial disclosure statements; and Special State Officers with responsibility for casino matters from accepting employment with or representing casinos or their parent companies during their term of office or for two years after leaving public service.

In addition, all Special State Officers (except those serving on Interstate Agencies or Commissions concerned with Health, Education or Welfare) are restricted from accepting employment with or representing casinos or their parent companies during their term of office.

The Governor said, "The Legislature has now passed a bill which will not deter qualified people from serving on such key bodies as the Port Authority of New York and New Jersey, the Palisades Interstate Park Commission and the State Board of Higher Education. This bill appears to be rational and constitutional. It achieves the objective of avoidance of conflict of interest without deterring the best individuals from accepting appointments to the State's boards and commissions."

#####

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

MAY 14, 1981

FOR FURTHER INFORMATION

KATHRYN FORSYTH

Governor Brendan Byrne today re-appointed twenty-six people to positions they formerly held on special New Jersey boards, commissions and councils.

The twenty-six were among the more than 180 people who resigned last year because of possible conflicts of interest under the casino ethics law.

With the signing of S-3041 by the Governor this morning, the potential conflicts of these twenty-six people have been resolved and the Governor re-appointed them to their positions.

A list of re-appointees is attached.

#####

26



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON
08625

BRENDAN T. BYRNE
GOVERNOR

Honorable Donald Lan
Secretary of State

Sir:

I hereby appoint to be members

of the

CORPORATION LAW REVISION COMMISSION:

Thomas J. Bitar, of Morristown;

BOARD OF BOILER PRESSURE VESSEL AND REFRIGERATION RULES:

Edward A. Bogucz, of Wayne;

PESTICIDE CONTROL COUNCIL:

John E. Boyd, of Princeton Junction;

STATE INVESTMENT COUNCIL:

Leonard E. Schwartz, of Livingston;

CLEAN AIR COUNCIL:

Irwin S. Zonis, of West Orange;

PESTICIDE CONTROL COUNCIL:

Richard E. Sameth, of West Orange;

PESTICIDE CONTROL COUNCIL:

Joseph E. Lomax, of Cape May Court House;

BOARD OF ARCHITECTS:

Richard H. Berns, of Livingston;

BOARD OF BEAUTY CULTURE CONTROL:

Burton Sebold, of Livingston;

COMMISSION ON INDIVIDUAL LIBERTY AND PERSONAL PRIVACY:

Roger Lowenstein, of Ridgewood;

CHILDREN SERVICES COMMISSION:

Jack Eisenstein, Ed.D., of Atlantic City;

EARLY WARNING TASK FORCE:

Mildred Bograd, of Lawrenceville;

STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANTS:

Fred Rohn, of Madison;

STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANTS:

Edwin H. Ruzinsky, of Old Tappan;

VOTER REGISTRATION ADVISORY COUNCIL:

Herman Green, of Verona;

STUDENT ASSISTANCE BOARD:

Lynn R. Goldwaite, of Mountain Lakes;

NEW JERSEY INSTITUTE OF TECHNOLOGY:

Robert I. Smith, of Allamuchy;

COMMISSION ON BUDGET PRIORITIES:

Marshall Wolf, of Newark;

STATE SOIL CONSERVATION COMMITTEE:

James A. Shissias, of Titusville;

COMMISSION ON INDIVIDUAL LIBERTY AND PERSONAL PRIVACY:

Daniel L. Golden, of South River;

EARLY WARNING TASK FORCE:

Charles Klatskin, of Teterboro;

NEW JERSEY INSTITUTE OF TECHNOLOGY:

Robert S. Raymar, of Newark

NEW JERSEY INSTITUTE OF TECHNOLOGY:

John Bain, of Bernardsville;

COMMISSION ON MOBILE HOME LIVING IN NEW JERSEY:

John E. Harrington, of Moorestown;

AGENT ORANGE COMMISSION:

Allen E. Falk, of Belford; and,

CLEAN WATER COUNCIL:

Charles J. Kupper, Jr., of Colts Neck,

to succeed themselves, resigned, for the terms prescribed by law.

Very truly yours,

GOVERNOR

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. L-4307-00

1-

MARLENE SINGER, JUDY LEVY,
MARTIN SPODY, EDWARD A. JESSER,
JR., ROBERT F. KELLASHER, FRANK E.
KLEMAN, HARVEY MOSKOWITZ,
LEONARD SCHWARTZ, FRED R.
SULLIVAN, COLLEEN A. HOLSTROM
and EDWARD BRAMER,

Plaintiffs

-v-

STATE OF NEW JERSEY: BRUNDAN T.
BYRNE as Governor of the State
of New Jersey; DEPARTMENT OF LAW
AND PUBLIC SAFETY: JOHN J. DEGNAN
as Attorney General of the State
of New Jersey; RESORTIVE COMMISSION
ON ETHICAL STANDARDS: ANGELO BIANCHI,
RICHARD HOUNT, WARREN SMITH,
JACOB YAPORNIK, EDWARD HOFMANN and
JOHN HABERLE as members of the
Executive Commission on
Ethical Standards,

Defendants.

TRANSCRIPT

of

NOTICES

for

SUMMARY JUDGMENT

OPINION

Mercer County Courthouse
Trenton, New Jersey

November 25, 1980

P R E S E N T

HONORABLE GERRIT V. SCIOCE, JUDGE

A P P E A R A N C E S:

HEILBRON, LIEDERMAN, GOLDSTEIN AND SYGAL, ESQ.
By: ROBERT S. HAYMAN, ESQ.
For the Plaintiffs.

JOHN J. DEGNAN, ATTORNEY GENERAL of the State of
New Jersey
By: RICHARD J. MURPHY, Deputy Attorney General
For the State of New Jersey

Miriam M. Bard, C. S. R.
Official Court Reporter
Trenton, N. J.

1 THE COURT: This matter comes before the
2 Court on Cross Motions for Summary Judgment and
3 is clearly susceptible for Decision as there are
4 no issues of any material fact.

5 The various plaintiffs have been, and two
6 still are members of State government by way of
7 having been appointed to one or another of the
8 various departments, boards, or commissions, all
9 of these appointive offices being part-time and
10 noncompensatory, and ranging from membership
11 on the New Jersey Highway Authority Commission,
12 Board of Trustees of Rutgers University, Director-
13 ship of the New Jersey Transit Corporation, Member
14 of the Board of Trustees of Stockton State College,
15 Member of the State Investment Council, Member of
16 the New Jersey Board of Professional Planners and
17 similar agencies and commissions.

18 By reason of the passage of Senate Bill
19 Number 1068, which became Public Law 1969, c. 79,
20 all of the plaintiffs except two felt compelled to
21 resign their office because of the provisions
22 encompassed within that new act.

23 Two of the plaintiffs, Miss Singer and Mr.
24 Kramer have not resigned and, therefore, challenge
25 the constitutionality of the act on the basis that

1 it has both restricted their future employment and
2 present employment. All the others have challenged
3 the constitutionality on the ground that the act,
4 itself, would have possibly brought them within
5 the prescription and subjected them to criminal
6 sanctions albeit at the level of disorderly persons.

7 The plaintiffs take the position that funda-
8 mental constitutional rights have been violated by
9 the passage of this act, that there is no compelling
10 state interest which overweighs the violation of
11 those rights and which would justify this act remaining
12 in effect. They further advance, by way of other
13 counts, a challenge on the basis of breach of
14 contract, a challenge on the basis that the act is
15 a bill of attainder.

16 The challenge to the constitutionality
17 includes the capacity of these plaintiffs in both
18 their public and private capacities as unpaid State
19 Officers and as citizens of the State. The argu-
20 ments with respect to breach of contract and bill
21 of attainder, have been briefed but not argued before
22 me today, and it seems to me that that is an exercise
23 of good judgment on the part of the plaintiff as I
24 don't consider either of these challenges to be
25 of any efficacy.

1 The argument is advanced that this act violates
2 First Amendment rights and Fourteenth Amendment
3 rights not only by way of violation of freedom of
4 expression of but also violation of substantive
5 due process and equal protection under the laws.

6 The State contends that no constitutional
7 fundamental rights are affected by this legislation,
8 that there is a rational basis for the legislation
9 and that even if fundamental constitutional rights
10 are involved, nevertheless, there is a compelling
11 State interest which outweighs and overcomes those
12 rights and which requires that judgment should be
13 entered in favor of the various defendants.

14 I neglected to mention there is, also, a Count
15 against the individuals for damages which, also, has
16 not been advanced except for the brief, and which
17 I have now considered and which I reject.

18 These individual defendants are not, in my
19 opinion, subject to damages as alleged in the com-
20 plaint and as to Count IV, V and VI, those Counts
21 are dismissed.

22 Count VII, I have already indicated that I
23 am rejecting that claim and dismissing that Count
24 also.

25 The problem, as I have already expressed in

1 my comments and questions during the oral argument
2 is really directed to two issues: first of all,
3 whether fundamental constitutional rights have been
4 violated, and secondly, whether they have or have not
5 whether the statute, itself, is overbroad in the
6 extent of its coverage -- overbroad to the extent that
7 it has to be considered as being unconstitutional.

8 I am well aware of the Rules of Law which
9 cloak legislative enactments with a presumption of
10 validity and I am even more aware of the position
11 of the Judiciary at the trial level with respect to
12 declaring legislation unconstitutional and it seems
13 to me that the issues have to be clearly resolved
14 before the Court at this level should reach any such
15 conclusion and render a verdict in favor of the
16 plaintiffs.

17 As I have already expressed, I am concerned
18 about the ambiguity in the Statute with respect to
19 the applicability of the Statute and the sanctions
20 to employees of partnerships, firms, corporations,
21 with which my special State Officer is involved
22 and the extent of that restriction over a two-year
23 period after that State Officer resigns or leaves
24 his position.

25 It is interesting to note that the Attorney

1 Renewal concludes or at least sets forth in his
2 brief that it is doubtful -- and I stress the word
3 doubtful -- that such employees were meant to come
4 within the scope of the statute.

5 Nevertheless, it is not clear to me and the
6 Statute could be read to indicate or define that
7 these employees did come within, and would be sub-
8 ject to the sanctions imposed under Section b.
9 That possibility alone leads the Court towards the
10 conclusion that the Statute has to be considered
11 overbroad.

12 It is mind boggling to think that some
13 employee, for instance of United Jersey Banks,
14 who decides to leave his employment as a teller and
15 go to work as a card dealer or a stickman for a dice
16 table at the casinos, could possibly lead to the
17 imposition of sanctions against him anytime within
18 two years after Mr. Jenner resigned, and yet that
19 is one interpretation that can legitimately be made
20 from the way the Statute is worded.

21 Beyond that, I am particularly concerned
22 about the extension of these restrictions and these
23 proscriptions to every special State officer
24 regardless of whether or not there is any possi-
25 bility of any connection between the commission or

1 board on which each special State officer is serving
2 and the operation of the casinos.

3 I appreciate the fact that the Legislature
4 is -- and properly so -- extremely concerned with
5 the operation of casinos, the control of the casinos,
6 the fact that they want to make sure that there is
7 no impropriety involved in the operation of that
8 industry, but as I have suggested before, I think
9 this is a matter of overkill and goes far beyond
10 any reasonable basis or any rational basis for
11 restricting the affairs of these special State
12 officers in the manner in which this legislation
13 restricts it. I can't see where the public interest
14 extends to the limits that are set forth within
15 this statute. I am frankly not convinced that the
16 statute, itself, violates the First Amendment
17 rights. The argument about freedom of expression,
18 that I have attempted to analyze, and that is my best
19 with my own limitations, but I cannot accept Mr.
20 Raymer's argument that a restriction on the employ-
21 ment, within reason, would be a violation of First
22 Amendment rights. But I find that in this particular
23 case, the restriction is not within reason and
24 consequently without reaching the question of whether
25 fundamental constitutional rights are violated, I

1 consider that this statute is so ambiguous, so
2 overbroad and without a rational basis of any state
3 interest that I am constrained to declare it un-
4 constitutional.

5 I will grant summary judgment in favor of
6 plaintiffs for the relief requested in Count I,
7 prayers for relief Number 1 and 2.

8 I don't think there is any necessity for
9 any injunction with such a declaration, Mr. Rayner.
10 Do you consider there should be?

11 MR. RAYNER: I think there should be because
12 it is the extension of a declaration under the
13 Constitution. That that direction means, no one can
14 enforce it.

15 THE COURT: Prayer for relief under 3 is
16 also granted under Count I. Numbers 4, 5 and 6 are
17 denied.

18 The same thing with Count II.

19 Let us make sure the prayers for relief are
20 the same. Same for Count II, prayers 1, 2 and 3 are
21 granted; 4, 5, and 6 are denied.

22 MR. RAYNER: Three and 4 are the State Constitutional
23 national rights.

24 THE COURT: Yes, same thing with Counts III
25 and IV; 7, 8, and 11 are dismissed.

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You submit a separate order, Mr. Deputy,

MR. DAYHART: Yes, your Honor.

THE COURT: Thank you very much.

MR. MURPHY: Thank you Judge.

(The proceedings were concluded)

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the Opinion rendered as taken stenographically by me in the above-stated cause.

MIRIAM A. BARD, C.S.R.
Official Court Reporter

Date: December 4, 1960

790180

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2306-80T3

MARIJANE SINGER, et al.,
Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Respondents.

FILED

JUN / 1982

D-5

Maria Bank
Clerk

Argued May 18, 1982--Decided JUN 1 1982

Before Judges Botter, Antell and Furman.

On appeal from Superior Court, Law Division,
Mercer County.

Robert S. Raymar argued the cause for appellants.
(Hellring, Lindeman, Goldstein & Siegal, attorneys;
Bernard Hellring, of counsel, and Mr. Raymar, on the
brief).

Michael R. Clancy, Deputy Attorney General, argued the
cause for respondents (Irwin I. Kimmelman, Attorney General
of New Jersey, attorney; James R. Zazzali, former Attorney
General, and Mr. Clancy, on the brief).

PER CURIAM

Appellants are 12 persons who held various unpaid, part-
time positions on State authorities, boards and commissions which
brought them within the definition of special State officers or
employees contained in N.J.S.A. 52:13D-13(e) of the New Jersey Con-
flicts of Interest Law, N.J.S.A. 52:13D-12 et seq. By L. 1980, c.
79, effective July 12, 1980, N.J.S.A. 52:13D was amended to provide
that no special State officer or employee shall accept employment with
any casino licensee or applicant for a casino license. By the

provisions of N.J.S.A. 52:13D-17.1 this prohibition extended for a period of two years after termination of such State service. The disability was made to extend to any partnership, firm or corporation with which a special State officer or employee was associated and all partners, officers and employees of such entities. N.J.S.A. 52:13D-16(b).

Appellants brought this action to challenge the constitutionality of this amendment as it applied to special State officers or employees. In addition to the State of New Jersey, the named defendants were various State agencies and officers with authority and responsibility to enforce the Conflicts of Interest Law. Summary judgment was entered in appellants' favor on various counts of their complaint, although their claim for relief under 42 U.S.C.A. §1983 was denied and their claim for counsel fees under 42 U.S.C.A. §1988 was also denied. On this appeal they contend that summary judgment should have been granted in their favor on the §1983 claim and, irrespective of the §1983 claim, counsel fees should have been awarded because they have prevailed on their contention that the amendment to the Conflicts of Interest Law violated their federal constitutional rights. We agree with these contentions.

Prior to the effective date of L.1980, c.79, more than 185 special State officers and employees resigned from their public positions. Ten of these and two who did not resign, Marijane Singer, who was the chairperson of the Rutgers University Board of Trustees, and Edward Kramer, who was a Member of the Board of Governors of Rutgers University, brought this action. One of the plaintiffs, a

member and chairman of the Rutgers University Foundation, Inc., was a partner in Bear Stearns & Co., a firm that was serving as a financial consultant and investment banker to Resorts International, a company that owns and operates a licensed casino in Atlantic City. This plaintiff, like others, resigned from his State position because of the provisions of the amended act which would have disqualified his firm and fellow employees from doing business with or becoming employed by any New Jersey casino licensee or applicant. The disqualification would have extended for a period of two years after this plaintiff left his State office or position, whether or not his position as member of The Rutgers University Foundation, Inc. had anything to do with casinos, much less the power to regulate them.

The trial judge held the statute unconstitutional because it was "overbroad" and was not rationally related to a reasonable state interest. In explanation of this view the trial judge referred to one of plaintiffs who was on the New Jersey Economic Development Council and was also chairman of the board of a large banking corporation in New Jersey. The trial judge found it inconceivable that an employee of the bank corporation, such as a teller, should be disqualified from employment with a casino because of this plaintiff's State position. He also found it unreasonable to extend these disabilities to every special State officer "regardless of whether or not there is any possibility of any connection between the commission or board on which that special State officer is serving and the operation of the casinos." Accordingly he

concluded that the statute went "far beyond any reasonable basis or any rational basis for [so] restricting the affairs of these special State officers...."

Although the trial judge rejected plaintiffs' contention that plaintiffs' First Amendment rights were violated, we believe he accepted plaintiffs' contentions that the statute violated the due process clause of the Fourteenth Amendment by infringing upon their right to pursue occupational and employment opportunities without unreasonable interference by the State, that it was vague and overbroad, and that it had a "chilling effect" upon the free exercise of their rights. We agree that the statute was irrational and unreasonably broad in a fashion that impinged upon plaintiffs' personal liberties. As such injunctive relief pursuant to §1983 was an appropriate remedy. See Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 507 (1980), where the United States Supreme Court held that injunctive relief against the Virginia Supreme Court and its members in their official capacity as enforcement officials was appropriate although the Virginia Supreme Court and its members were immune from suit under §1983 when acting in their legislative capacity.

Plaintiffs were the "prevailing" parties below within the meaning of 42 U.S.C.A. §1988 with respect to some of their claims and could have been awarded counsel fees against defendants who were State officers or agencies charged with the duty of enforcing the Conflicts of Interest Law. See id., 446 U.S. at 737-739, 100 S.Ct. 1967, 64 L.Ed. 2d at 657-658; Carmel v. Hillsdale Boro.