

JUNE 23, 1949.

HONORABLE DONALD G. COLLESTER,  
County Prosecutor,  
Court House,  
Paterson, New Jersey.

## FORMAL OPINION—1949. No. 68.

DEAR SIR:

Receipt is acknowledged of your request of May 27, 1949, for a formal opinion with respect to the effect of Chapter 80 of the Laws of 1948 upon jurisdiction of the county prosecutors when read in conjunction with Rule of Court 8:4-1.

The county prosecutor is a constitutional officer, nominated and appointed only by the Governor with the advice and consent of the Senate. (Art. VII, Sec. 2, par. 1, N. J. Constitution of 1947.) The Constitution makes no provision for the duties of the office, and they are therefore by necessary implication left to definition by the Legislature. *Public Utility Commission vs. Lehigh Valley Railroad Company* (E. & A., 1929), 106 N. J. L. 411; *State ex rel O'Reardon vs. Wilson* (D. C., 1926), 4 N. J. Misc. 1008. See *State vs. Longo* (E. & A., 1947), 136 N. J. L. 589.

The Legislature has vested in the prosecutors of the pleas (now county prosecutors) the exclusive jurisdiction over the criminal business of the State except in counties where for the time being there be no prosecutor, or where the prosecutor desires the aid of the Attorney General, or as otherwise provided by law. R. S. 2:182-4.

The Supreme Court has promulgated a rule governing local criminal courts Rule 8:4-1 provides as follows:

"Whenever in his judgment the interests of justice so require, or upon request of the magistrate, the attorney general, county prosecutor, or municipal attorney, as the case may be, may appear in any court on behalf of the state, or of the municipality, and conduct the prosecution."

Nowhere in the Constitution, the decisions or the statutes, is the Supreme Court of New Jersey given any jurisdiction to alter the powers of the county prosecutors by removing or supplanting the jurisdiction which the Legislature has vested in that office. As a result the answers to your questions are as follows:

*First:* Under Rule 8:4-1, the municipal attorney does not supersede the county prosecutor in a prosecution of criminal cases heard by the municipal court under Chapter 80 of the Laws of 1948, but his authority is concurrent with that of the county prosecutor, who may step in at any time to take over said prosecution.

*Second:* The county prosecutor has exclusive and complete control over criminal prosecutions within the county, and the provisions of Chapter 80 of the Laws of 1948 are an additional means of disposing of the criminal business of the State which the prosecutor may or may not recognize as he sees fit. Rule 8:4-1 does not supersede Sections 2:182-4 and 2:182-5 of the Revised Statutes.

*Third:* The municipal attorney does not have the right to conduct preliminary hearings before the magistrate and does not supersede the prosecutor therein. These