

The sheriff retains manifold duties, most of them unrelated to investigation in connection with law enforcement. He is responsible for, for example, service of process, for the levy of execution and conduct of sheriff's sales, for the seizure of chattels to aid a distraint for rent and for other activities in conjunction with the administration of civil justice. A major segment of his responsibility is in the safeguarding of prisoners, their transportation to the State Prison and the custody of the county jails. Another surviving responsibility is to restrain riots and unlawful assemblies by the reading of the Riot Act and to arrest those who disobey the Riot Act.

My opinion must be, therefore, that an undersheriff is not per se entitled to a private detective's license based upon his experience in that office; his services and functions may have been wholly unrelated to investigative work in law enforcement. He must establish that he has been predominantly engaged in criminal or related investigative work in order to meet the statutory standards set forth in N.J.S.A. 45:19-12. The absence of any appropriations for such activities by the sheriff and his subordinates within a county would be conclusive evidence that the undersheriff in question was not eligible based upon his experience as an undersheriff for a private detective's license.

Very truly yours,

DAVID D. FURMAN
Attorney General

OCTOBER 25, 1961

MR. GEORGE C. SKILLMAN
Director of Local Government
Department of the Treasury
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-30

DEAR DIRECTOR SKILLMAN:

We have been asked whether a member of a municipal sewerage authority forfeits his office under N.J.S. 2A:135-9 because of his conviction for bribery and conspiracy to commit bribery or whether it is necessary that the incumbent be removed from office under R.S. 40:14A-5(c).

N.J.S. 2A:135-9 provides as follows:

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

R.S. 40:14A-5(c) is, in part, as follows:

"A member of a sewerage authority may be removed only by the governing body by which he was appointed and only for inefficiency or neglect of duty or misconduct in office and after he shall have been given a copy of the charges against him and, not sooner than ten days thereafter, had opportunity in person or by counsel to be heard thereon by such governing body."

It is our opinion that the two cited statutes are not inconsistent with one another, but, rather, that they provide separate remedies. N.J.S. 2A:135-9 has to do with the commission of a crime; R.S. 40:14A-5(c) applies to circumstances justifying removal from office, among which may be, but need not exclusively be, actions which also constitute criminal conduct. In this regard see *Beggans v. Civil Service Commission*, 10 N.J. Misc. 1142 (Sup. Ct. 1932) and *Walter v. Police and Fire, etc. Trenton*, 120 N.J.L. 39 (Sup. Ct. 1938).

Removal under R.S. 40:14A-5(c) requires action to be initiated by the appointing authority. Forfeiture under 2A:135-9 arises from the fact of conviction without regard to action of the appointing authority; it is automatic upon conviction. Cf. *State Board of Medical Examiners v. Weiner*, 68 N.J. Super. 468 (App. Div. 1961).

N.J.S. 2A:135-9 is self-executing. Neither notice nor hearing need be given to the guilty employee before he is ousted under this section. The antecedent to N.J.S. 2A:135-9, L. 1913, c. 74, was so construed in *Mulsoff v. Sloat*, 8 N.J. Misc. 554 (Sup. Ct. 1930). In *Newark v. Dep't of Civil Service*, 68 N.J. Super. 416 (App. Div. 1961), the court considered a section of the Faulkner Act, R.S. 40:69A-166, providing for forfeiture of public employment on conviction of a crime of moral turpitude. It held that an employee may not be ousted under that section except after notice and hearing. However, it expressly distinguished *Mulsoff v. Sloat*. It noted that the Faulkner Act forfeiture section lacks the language of N.J.S. 2A:135-9 that the guilty employee shall "cease to hold the same [his employment] from the date of such conviction or entry of such plea [of guilty, non vult or nolo contendere] * * *." 68 N.J. Super. at 432.

The crimes of which the incumbent was convicted involved "the administration of his office or position." We note in passing that bribery is, in addition, a crime "which involves moral turpitude." *Huff v. Anderson*, 212 Ga. 32, 90 S.E. 2d 329, 52 A.L.R. 2d 1310 (Sup. Ct. 1955); *Baker v. Miller*, 236 Ind. 20, 138 N.E. 2d 145, 59 A.L.R. 2d 1393 (Sup. Ct. 1956); *People v. McGuane*, 13 Ill. 2d 520, 150 N.E. 2d 168, 71 A.L.R. 2d 580 (Sup. Ct. 1958). Cf. *City of Newark v. Department of Civil Service, supra* (holding that an employee who pleaded nolo contendere to a charge of federal income tax evasion is entitled to a hearing to determine if the offense involved moral turpitude under the forfeiture provision of the Faulkner Act, R.S. 40:69A-166). See also *State Board of Medical Examiners v. Weiner*, 68 N.J. Super. 468 (App. Div. 1961). There can be no question, therefore, that N.J.S. 2A:135-9 requires forfeiture upon conviction for the crime of bribery.

As stated by Chief Justice Brogan in *Schireson v. State Board of Medical Examiners*, 130 N.J.L. 570 (E. & A. 1943):

"A conviction in ordinary legal language consists of a plea of 'guilty' or a verdict of guilty and it is immaterial whether final judgment has been rendered thereon. Bishop on *Statutory Crimes* § 348." See also 14 Am. Jur. 759, Criminal Law § 8.

We conclude that upon conviction of the crimes charged the incumbent immediately forfeited his position and from that date a vacancy existed.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: PATRICK J. MCGANN, JR.
Deputy Attorney General

NOVEMBER 8, 1961

HONORABLE KATHARINE E. WHITE
Acting State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-31

DEAR MRS. WHITE:

You have asked whether a widow of a deceased member of the Prison Officers' Pension Fund may receive a refund of contributions when the deceased member had less than five years' service in the employ of the State and where his death resulted from injuries incurred in other than the performance of his duties.

We are of the opinion that the statute does not authorize a refund of contributions and therefore none can be paid. R.S. 43:7-9 covers the situation where a prison officer dies in the performance of his duties. Clearly this section is not applicable to the instant situation where the prison officer died in an activity other than the performance of his duties.

R.S. 43:7-10 states that in the event of the death of a prison officer from causes other than those received or incurred in the performance of his duties, a pension shall be paid to his beneficiaries provided that the deceased had served in the employ of the State for five years. This section is also not applicable to the present situation where the prison officer had served less than five years in the employment of the State.

R.S. 43:7-15 provides for refunds whenever a prison officer is suspended, resigned, dropped or discharged from his employment. However, the statute specifically provides that "No other refund of assessments collected from the salaries of such pension [sic] officers shall be made."

Consistent with this opinion is the Attorney General's opinion of August 10, 1961, which held that where a refund of contributions to the administrator of an estate was not provided for in the Prison Officers' Pension Fund statutes, the Board may not authorize payment.

This result differs from the result in the Public Employees' Retirement System, where under N.J.S.A. 43:15A-41(c), express provision is made for payment to the widow under these circumstances. The Prison Officers' Pension Fund Commission, however, has no authority to refund contributions to a widow where the deceased