

FORMAL OPINION

The powers of a county's chosen freeholders with respect to a county board of taxation remain strictly limited by statute. They are to approve the appointment of clerical assistants by the board (N.J.S.A. 54:3-7), to fix, within limits, the salary of the board's secretary and assistants (N.J.S.A. 54:3-8), to provide space for the transaction of the board's business and the safekeeping of its records and to furnish necessary supplies to the board (N.J.S.A. 54:3-29, 3-30), and to defray travel expenses of the board's members and its secretary (N.J.S.A. 54:3-31). Doubtless these powers continue to be exercised by the county governing body under the Optional County Charter Law. However, neither that statute nor any other law permits the dilution of a county tax board's own responsibilities, which are those of an agency of *State* government, either by the establishment of a separate office with jurisdiction over the same subject matter or by the formal transfer of the board's independent statutory functions.

For these reasons, it is our opinion that the provisions of the Hudson County Administrative Code which purport to establish an office with substantive authority over tax assessments and to transfer to that office functions conferred by statute upon the County Board of Taxation are beyond the statutory authority of a county governing body and are therefore legally without force and effect.

Very truly yours,
WILLIAM F. HYLAND
Attorney General of New Jersey
By: PETER D. PIZZUTO
Deputy Attorney General

* Section 12.1 states that the Board continues as an agency not allocated among or within the departments of county government.

June 21, 1976

ELAINE B. GOLDSMITH, DIRECTOR
Executive Commission on Ethical Standards
222 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 18 - 1976

Dear Mrs. Goldsmith:

You have asked for our opinion as to whether the Conflicts of Interest Act prohibits a State officer or employee from holding or being employed in a separate State office or position at the same time. For the following reasons, you are advised that such dual State employment or officeholding is not proscribed by the Conflict of Interest Act. However, dual State officeholding may be regulated by the respective departments of State government when it is deemed that such officeholding might reasonably be expected to impair the objectivity and independence of the State employee in the exercise of his or her primary job responsibilities.

ATTORNEY GENERAL

The subject of dual employment is extensively treated by the New Jersey Constitution, common law, and various statutes. See *N.J. Const.*, Art. IV, §5, par. 1,3, 5 and Art. VI, §6, par. 7; N.J.S.A. 19:3-5; N.J.S.A. 40A:9-4; N.J.S.A. 52:37B-69.1. See also N.J.A.C. 4:1-18.4. Except for certain specific proscriptions contained in the Constitution or statutes, there is no absolute bar to dual employment. Such employment is proscribed only where the duties of two positions are incompatible, inviting the incumbent to prefer one obligation to another. *E.g.*, *Kaufman v. Pannuccio*, 121 N.J. Super. 27 (App. Div. 1972), certif. den. 62 N.J. 192 (1973). Indeed, the Legislature has, in the area of municipal government, specifically permitted dual employment of an elective county office and an elective municipal office and of a legislative office and nonelective or appointive office or position in the county or municipal government. N.J.S.A. 40A:9-4.

The Conflicts of Interest Act, however, predominantly concerns the regulation and control of the activities of legislators, State officials and employees in their private business and commercial contractual dealings with the State. See generally 1969 *Report of Legislative Commission on Conflicts of Interest*. For instance, N.J.S.A. 52:13D-15 prohibits a legislator, State officer or employee from participating on behalf of any party other than the State in negotiations for the acquisition or sale of State property. Similarly, N.J.S.A. 52:13D-16 generally prohibits a legislator, State officer or employee from representing any party other than the State in proceedings before various State agencies. N.J.S.A. 52:13D-17 proscribes representation by a former State officer or employee involving matters in which the officer or employee was directly involved in during his State service. In like vein, N.J.S.A. 52:13D-20 proscribes the representation by a legislator, State officer or employee on behalf of the State for the transaction of any business with himself or a corporation of which he has an interest. It is thus apparent that the controls and proscriptions contained in the Conflicts of Interest Act are far removed from the area of dual public employment. Rather, the entire thrust of the Act is directed towards private business and commercial dealings with the State.

Nonetheless, it has been suggested that the restrictions contained in N.J.S.A. 52:13D-19 on obtaining contracts awarded by the State extend to and prohibit dual State employment.* This suggestion ignores the plain fact that the entire tenor of that provision, as the tenor of the Act itself, is directed towards dealings and negotiations with the State for contracts or agreements to supply the State with either commercial, business or the personal services of a person acting in his private capacity. Initially, this is indicated by the nature of the exceptions enacted to the general prohibition concerning contracts let by competitive bidding. The legislative preoccupation with contracts or agreements awarded through the competitive bidding process is indicative of an intention to deal with those contracts traditionally and normally associated with the competitive bidding process, *i.e.*, contracts for equipment, supplies, public works and buildings. See N.J.S.A. 2A:135-6; N.J.S.A. 40A:11-3. Moreover, the legislative reference in N.J.S.A. 52:13D-19 to "partners," "corporations" and "to undertake or execute" are terms normally associated with the typical business or commercial contract. In contrast, State officeholding or employment situations are not normally considered contractual in nature. The indicia of public service is essentially governed by statute and is considered *sui generis*. *Adams v. Mayor and Common Council of City of Plainfield*, 109 N.J.L. 282 (Sup. Ct. 1932), *aff'd* 110 N.J.L. 377 (E. & A. 1933).

Any remaining doubts that the Conflicts of Interest Act does not impose a general proscription on dual State officeholding or employment must be resolved in

FORMAL OPINION

light of the traditional rule of statutory construction that statutes should be construed to substantially conform to the Legislature's intent and to avoid unreasonable results. *County of Monmouth v. Wissel*, 68 N.J. 35, 42 (1975). A construction of the Act which would draw dual State employment within the parameters of its general proscriptions would simply not be consistent with its primary purpose, *i.e.*, to regulate and control the narrow area of private business and commercial relationships with the State by legislators, State officers and employees. Moreover, the consequences of such an interpretation would produce substantial hardships for many State employees in situations which are far removed from the Act's essential objectives. Surely, it cannot be suggested that the Legislature intended, for example, the harsh result of prohibiting a maintenance worker for the Department of Transportation earning \$6500 a year from also being employed on a different shift as a maintenance worker in the Department of Environmental Protection earning a similar salary. Yet, this is precisely the type of dual State employment which would be prohibited under a contrary interpretation of the Conflicts of Interest Act.

It is thus apparent that the literal terms of the Conflicts of Interest Act and its underlying policy are not indicative of a legislative purpose to deal substantially with dual State officeholding or employment situations and to alter the general body of law on dual employment. However, consistent with that body of law the Act does recognize that, through departmental codes of ethics, State officers or employees should not act in their official capacity in any matter involving a direct or indirect financial interest which "might reasonably be expected to impair his objectivity or independence of judgment." N.J.S.A. 52:13D-23 (e) (5). Through this provision, dual officeholding or employment could be precluded where it tends to impair the objectivity of a particular officer or employee.

In light of the foregoing, it is our opinion that the Conflicts of Interest Act does not impose an absolute bar to dual State officeholding or employment. The departments of State government, however, are free to regulate dual officeholding in instances where it may be expected to impair the objectivity and independence of the State officer or employee in the exercise of his or her primary job responsibilities.

Very truly yours,

WILLIAM F. HYLAND

Attorney General

By: ERMINIE L. CONLEY

Deputy Attorney General

* N.J.S.A. 52:13D-19 provides in pertinent part:

"No member of the Legislature or State officer or employee shall . . . undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25.00 or more, made, entered into, awarded or granted by any State agency; provided however, that the provisions of this section shall not apply to (a) purchases, contracts, agreements or sales which (1) are made or let after public notice and competitive bidding or which (2), pursuant to... [law], may be made, negotiated or awarded without public advertising or bids, or (b) any contract of insurance entered into by the Director of the Division of Purchase and Property . . ."