

# One to a Customer

*The Democratic Downsides of  
Dual Office Holding*

By TOM O'NEILL



*Produced by NJPP and Dēmos: A Network for Ideas and Action*



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# *Foreword*

Throughout its history, New Jersey has had a penchant for doing things differently. In the late 19th century, when other states were “trust busting”—breaking up monopoly corporations in the name of consumer rights—New Jersey was inviting such firms to register in the Garden State in return for a share of the profits going into state government coffers. When President Abraham Lincoln signed the Emancipation Proclamation in 1863 to free slaves, the New Jersey Legislature passed a resolution opposing the measure. Indeed, New Jersey was the last northern state to ban slavery and the only state Lincoln lost both times he ran for President.

This is one of only two states where motorists are not allowed to pump their own gasoline and the only state where people who want to use public beaches have to pay for the right. And most states do not divide themselves into so many tiny jurisdictions for the purpose of providing local government services and elementary and secondary education.

And of course there is the state’s politics. Hardly anywhere else is the governor the only executive branch official in state government who is elected. Having a legislature that never meets on back-to-back days is virtually unheard of elsewhere. New Jersey might or might not be the “most corrupt” state in the nation, but over the past few years the list of elected officeholders from both parties who have been convicted of criminal offenses has grown embarrassingly long.

But New Jersey appears to be in a period of introspection and self-improvement. “Business as usual” is being challenged by the public and the press, with many strong signals that politicians will be responsive to cries for change. So it is against the background of both the state’s traditions and its apparent current appetite for reform that we offer this report dealing with, arguably, one of the most sacred of New Jersey’s sacred cows: dual office holding. In some states, holding more than one elective office is simply not done. In others, it can’t be done because it is against the law or violates the state constitution. But in New Jersey, it is not too strong to say that dual office holding is practiced with a vengeance.

Mayors are also legislators; freeholders are also mayors, and so on. It takes place in the state’s largest city and many of its smallest towns. It’s perfectly legal—but far from perfect.

This report is a collaboration between two organizations that share common goals, New Jersey Policy Perspective and Dēmos. Since 1997, NJPP has been analyzing state policy with the aim of broadening debate on important issues. It is a nonpartisan, non-profit organization with the mission of injecting a credible progressive voice into New Jersey public affairs. NJPP works to raise public awareness of the real choices the state faces and encourages informed, honest debate over solutions. Dēmos, a Network for Ideas and Action, is a national public policy organization based in New York City. Dēmos' twin aims are to help build a robust and inclusive democracy characterized by high levels of electoral participation and civic engagement and an economy where prosperity and opportunity are broadly shared and disparity reduced.

The NJPP-Dēmos partnership was made possible by the generous support of The Fund for New Jersey. We are grateful to The Fund's board and its President, Mark M. Murphy, for seeing the potential in a trans-Hudson initiative that can help make New Jersey a better place and at the same time expose a wider audience to ideas that enhance democracy and government responsiveness. We hope this is the beginning of many more such efforts. We also appreciate the work of Tom O'Neill on this project. Tom has been a longtime observer of, and participant in, New Jersey public affairs, from vantage points in and out of government. He brought to this project a potent mix of institutional memory and a willingness to challenge the status quo.

It is our intention in producing this report to raise the visibility of dual office holding and call it into question by placing the practice in the larger context of what we as a society have a right to expect from our democratic institutions. The more people who participate in it—whether by voting or seeking the votes of others—the better electoral democracy works.

Being different can have its virtues. But there also comes a time for shining a light on longstanding ways of doing things and asking whether we can do better. We think this is one of those times.

Jon Shure  
President, New Jersey Policy Perspective

Miles Rapoport  
President, Dēmos

# *Executive Summary*

According to the Center for Public Integrity, 33 percent of New Jersey legislators received income from a government agency other than the Legislature and at least 20 held more than one elected office. Dual office holding also is common at the county and local level.

There are many reasons for concern. Holding two elective offices in New Jersey:

- Insulates office holders from political accountability
- Frustrates the system of checks and balances among levels of government
- Is a form of political double-dipping
- Amplifies pork-barrel spending
- Blocks the political ladder to emerging aspirants
- Reinforces the state's predilection for localism, parochialism and fragmentation
- Creates "low-show" jobs that divide the time and attention of elected officials
- Puts officials in a built-in conflict situation

The 1947 constitutional convention in New Jersey considered but did not adopt a ban on dual office holding. The New Jersey Supreme Court in 1961 issued a ruling that threatened the practice, but the Legislature passed a bill—signed by Gov. Richard J., Hughes—that affirmed it. Since then, measures have been introduced in the Legislature to end dual office holding but have not advanced to votes.

Rules with regard to dual office holding should be set in legislation based on clear ethical principles that would promote transparency, diminish conflicts of obligation, enhance electoral competitiveness and encourage participation in the political process. In addition, the citizen-legislator ideal embedded in New Jersey's political culture should be considered in evaluating the practice of dual office holding. Someone serving as both mayor and legislator is engaged in government and politics full-time or very nearly so.

Supporters of dual office holding offer various arguments in defense of the practice. But they fail to meet the ethical tests cited above and ignore the reality that in most cases dual offices are held in legislative districts or other jurisdictions that are dominated by one party, making it difficult for voters to end dual office holding at the polls.

The immediate need is to ban dual elective office holding in New Jersey. Such a measure could be done by statute; a constitutional amendment is not needed. Current dual office holders should not be excepted from any ban; the need to remove conflict created by the practice is more urgent than the need to consider inconvenience caused to elected officials by changing the rules.

Dual office holding is a fundamental part of institutional arrangements in New Jersey that create conflicts of obligation, erode accountability and promote parochialism. The ban will not magically create wise policy, nor will it end all conflicts of interest or obligation. But the price of this dubious New Jersey tradition has become too high for whatever benefits it might once have promised. Times change. The time is overdue for a return to the citizen-legislator.

## “*Extremely Awkward*”

This dialogue, from the Gilbert and Sullivan opera *The Mikado*, between Koko, the Lord High Executioner, and Pooh-Bah, the Lord High Everything Else, illustrates the conflict of obligations at the heart of holding multiple public offices.

**KOKO.** Pooh-Bah, it seems that the festivities in connection with my approaching marriage must last a week. . . I want to consult you as to the amount I ought to spend upon them.

**POOH.** Certainly. In which of my capacities? As First Lord of the Treasury, Lord Chamberlain, Attorney General, Chancellor of the Exchequer, Privy Purse, or Private Secretary?

**KOKO.** Suppose we say as Private Secretary.

**POOH.** Speaking as your Private Secretary, I should say that, as the city will have to pay for it, don't stint yourself, do it well. . . Of course you will understand that, as Chancellor of the Exchequer, I am bound to see that due economy is observed.

**KOKO.** Oh! But you said just now “Don't stint yourself, do it well.”

**POOH.** As Private Secretary.

**KOKO.** And now you say that due economy must be observed.

**POOH.** As Chancellor of the Exchequer.

**KOKO.** I see. Come over here, where the Chancellor can't hear us. (They cross the stage.) Now, as my Solicitor, how do you advise me to deal with this difficulty?

**POOH.** Oh, as your Solicitor, I should have no hesitation in saying “Chance it. . .” If it were not that, as Lord Chief Justice, I am bound to see that the law isn't violated. . . Of course, as First Lord of the Treasury, I could propose a special vote that would cover all expenses, if it were not that, as Leader of the Opposition, it would be my duty to resist it, tooth and nail. Or, as Paymaster General, I could so cook the accounts that, as Lord High Auditor, I should never discover the fraud. But then, as Archbishop, it would be my duty to denounce my dishonesty and give myself into my own custody as first Commissioner of Police.

**KOKO.** That's extremely awkward.

## *New Jersey: Home of the Double Dippers*

**T**welve new members were elected to the Assembly last November. Seven of them held an elected local or county office at the time. That is not unusual. Service in local government is a familiar stepping stone to statewide office. But what is unusual in New Jersey is that the local official does not have to choose between municipal or county office and the Legislature. When those seven new legislators entered the Assembly, five of them retained their local offices.<sup>1</sup> That they were able to make that choice testifies to the resilience of the peculiar New Jersey institution of dual office holding.

Conspicuously absent from a 23-bill ethics reform package passed by the Legislature and signed by Gov. James McGreevey in 2004 amidst a public and media outcry over corruption was any restriction on dual office holding by legislators. Even the attempt to create a study commission to review the practice was never posted for a vote in the Senate. Assemblyman David Wolfe observed at a hearing of the Assembly State Government Committee when it considered a resolution to create a commission to study dual office holding that, “very often. . . commissions and task forces are a good way to bury an issue.”<sup>2</sup> The committee was chaired by Assemblyman Mims Hackett, who, as it happens, is the mayor of Orange.

The resolution would have set up a nine-member commission to examine dual office holding in New Jersey and review rules and practices in other states. It would have included representatives of the League of Women Voters, New Jersey League of Municipalities and a political science professor. The commission was to hold at least three public hearings and make recommendations. The measure was passed in the Assembly by a 69-10 vote, but never made it out of committee in the Senate. Even a study of dual office holding was apparently too much for some in legislative leadership. That probably should not be surprising. In 1962, when the statute that still governs dual office holding was adopted, the legislators responded to a court decision limiting the practice by passing a bill explicitly authorizing them to hold elected or appointed municipal or county offices and hold more than one elected office.<sup>3</sup> In the absence of any significant statutory limitations on holding two elective offices, the rel-

atively few limits in place in New Jersey are the result of judicial decisions applying the common-law principles of incompatible offices.

Such lack of interest by New Jersey legislators in focusing attention on dual office holding is in keeping with the findings in a report issued by the Center for Public Integrity in September 2004. It found that, at the time, 33 percent of New Jersey legislators received income from a government agency other than the Legislature. That rate is one-third higher than the next state on the Center's list, Delaware. Looking just at elected offices, at least 20 of the 120 legislators hold two. In 2004, every one of those seats, five held by Republicans and 15 by Democrats, was in what would be considered a "safe" district dominated by one party.

New Jersey ranks first in the nation in dual office holding by legislators.<sup>5</sup> The Center for Public Integrity's report looks only at legislators who hold other *elective* office. A forthcoming report by NJPP will examine the problem of service in the Legislature by those who hold other, unelected public sector employment.

Dual office holding is also common at the county level. Eighteen mayors and local council or committee people also serve as freeholders (10 Democrats and eight Republicans). In last fall's freeholder election in Bergen County, three of the four candidates were mayors. *The Record* reported that Democratic incumbent freeholders David Ganz and Bernadette McPherson saw no problem with holding both offices. Republican challenger Michael Kaplan, the mayor of Norwood, offered merely to "consider" not running for re-election as mayor if he found a tension between serving in the two offices. As *The Record* observed, "Holding more than one elected position divides a person's loyalties and energy." That is true of local officials who also serve either at the county or the state level.<sup>6</sup>

The only state or local official in New Jersey prevented from holding two elected positions is the governor (except, of course, when the Senate President fills a gubernatorial vacancy). The state constitution required that Jon Corzine step down from the U.S. Senate to become New Jersey's governor in 2006. Otherwise, he could hold both offices simultaneously, just as Sharpe James, mayor of the state's biggest city, also represents Newark as Senator from the 29th District.

What's wrong with your mayor also serving as your senator, or your local council member also being a county freeholder? There are many reasons for concern. Holding two elective offices in New Jersey:

- **Insulates office holders from political accountability.** The combined powers of the two offices make safe seats even safer. Dual office holding doubles the incumbent's advantage. The mayor/legislator can gain greater name recognition and enjoy a fundraising edge by accepting contributions for both offices (with more of the money coming from outside the local jurisdiction contributed by interests who want clout in the Legislature). As a legislator, the incumbent has a district office and staff as well as whatever staff may be provided to a local official. And, of course, the mayor/legislator can take credit for state aid or grants delivered to the district.
- **Frustrates the system of checks and balances among levels of government.** State Sen. Sharpe James used senatorial courtesy to block the appointment of a new Essex County prosecutor. That's the same prosecutor who would be responsible for possible corruption investigations concerning the administration of Mayor Sharpe James. *The New Jersey Law Journal* pointed out the risk: "The independence of county prosecutors is absolutely essential to public confidence. . . Unfortunately, the process will not be free of contamination until the Legislature prohibits dual-office holding or prohibits the exercise of senatorial courtesy in circumstances such as this."<sup>7</sup>
- **Is a form of political double dipping.** Those holding two offices draw two public salaries and boost their pension payments as well—a bill that keeps coming due for taxpayers over the years.
- **Amplifies pork-barrel spending.** Inflated pensions may be far less costly than the "Christmas tree" items that dual office holders in the Legislature can add to appropriations bills. Their state office makes it easier for them than for other local officials to boost state aid to their towns in a way that may direct a disproportionate share of limited state funds to hometown projects. By wiring the process from the inside, dual office holders can slight competing demands in communities whose mayor or council members do not also fill a seat in the Legislature.

In early January, *The Star-Ledger* reported that the lame-duck Legislature approved \$38 million for special aid. Included were five grants worth \$2 million for West New York, where then-Assembly Speaker Albio Sires serves as mayor. Another \$225,000 in aid went for an ambulance and vans in Union City, where the mayor is Assemblyman Brian Stack. Agencies in Newark and Bayonne, whose mayors are also state senators serving on the Budget and Appropriations Committee, were awarded 24 grants totaling almost \$2.5 million.<sup>8</sup>

When local officials approach legislators for special aid for their communities, the latter serve as screens that filter out some portion of the total requests made of them. That check is lost with a dual office holder, who need only convince herself or himself that a hometown project merits state funding. If all the local elected officials who also serve in the Legislature performed that well for their towns, the total cost to state taxpayers would exceed \$20 million a year for items that may fail to reflect actual statewide needs.

- **Blocks the political ladder to emerging aspirants**, a factor in the under-representation of women, African-Americans and Latinos in the Legislature. A recent study by the Center for American Women and Politics at Rutgers University identified just 19 women among New Jersey's 120 legislators, and just 23 legislators of color. The state that is first in dual office holding is 43rd in the percentage of women holding elective office.

This inverse relationship between diversity and dual office holding is no coincidence. Granted, several of those who hold dual elective offices are Latino or African-American, but in the last legislative session none was a woman. If a local council member does not give up that seat to serve in the Legislature, new aspirants will be blocked in the attempt to climb the political ladder. That New Jersey has sent only five women to the U.S. Congress in its entire history could at least in part be explained by the blockage caused by male (for the most part) dual office holders.

- **Reinforces the state's predilection for localism, parochialism and fragmentation.** Local officials take a local view; they take that view with them when they serve in Trenton. Regional or statewide considerations often take a back seat. A former Assembly Speaker, the late Alan Karcher, urged that local government should be a testing ground for leaders who aspire to statewide office, not a complement to statewide office. As he wrote in his book about New Jersey's fractionalized system of local government, dual office holding gives members of the Legislature an incentive to preserve the status quo:

Members of the state Legislature are permitted to serve also as local officials, either elected or appointed. This practice results in a number of legislators having a strong commitment to maintain the current jurisdictional arrangements.<sup>9</sup>

Indeed, recent coverage of a meeting on the prospects of service sharing among New Jersey municipalities included this quote from Charles Severino, president of the school board in the Bergen County town of Bogota: “I cannot see a legislator voting to hit communities with a stick when he is also mayor of a community.”<sup>10</sup>

- **Creates “low-show” jobs that divide the time and attention of elected officials who bear heavy responsibilities in one office while trying also to meet the demands of a second and, sometimes, a third, public job—and in many cases also a private sector job.** This calls into question how much time a person can spend on each position, which in turn raises the question of whether local taxpayers are “getting their money’s worth.” One new legislator calculated the time demands and decided not to continue to serve in local office:

The day after she was elected, Jennifer Beck sat down with a calendar and calculated she would have to be in Trenton 64 days this year to attend committee hearings or floor voting sessions. Those days would be lost from her job as a vice president of marketing for a health care company. Even as the president of the company dismissed her concerns, Beck insisted on a commensurate cut in pay. ‘It didn’t seem right not to,’ said Beck, who also will resign her elected post on the Red Bank city council. ‘I was going to miss one out of four workdays. Why should I get paid for them?’<sup>11</sup>

Not all legislators see it that way. In 2003, Assemblyman Ronald S. Dancer was reported to be earning \$100,151 a year from three taxpayer-funded jobs: \$3,181 as the mayor of Plumsted, \$49,000 as an assemblyman and \$47,970 in a full-time job as an interviewer for the Ocean County Adjuster’s office. Dancer said there were no ethical problems created by holding three public jobs. He opposed legislation that would have banned dual office holding.<sup>12</sup>

- **Puts officials in built-in conflict situations.** Assemblyman Michael Panter described the clash of duties in a letter to the editor:

Holding two elected offices is simply not ethical. . . *[Consider, for instance, a]* mayor who also serves in the State Legislature. . . As a legislator she’ll be advocating for a finite amount of state resources for the many municipalities she represents. As a mayor, her duty is to fight for the biggest piece of the pie

for her town. It would be very difficult to carry out both duties effectively. It's like negotiating a sale price on behalf of both buyer and seller.<sup>13</sup>

- **Unfairly advantages dual office holders' hometown communities.** Not only may a legislator/mayor favor his or her home municipality over others in distributing state resources, he or she may favor that community over others in the same legislative district. Union City, which Mayor Brian Stack represents in the Assembly, may have a new swimming pool with a retractable roof, but how about other towns in the 33rd District? Residents of towns in a district that do not benefit from a dual office holder will have little luck voting that legislator out of office because dual office holders tend to come from safe districts.

Did the needs of Guttenberg, Weehawken and Jersey City get equal consideration with Mayor Stack's own Union City? Stack told the Center for Public Integrity that, "If I wasn't a mayor, or if I wasn't an assemblyman, I never would have gotten those funds." While mayor, Stack also served as a county freeholder, but dropped that post upon his election to the Assembly.<sup>14</sup>

Dual office holding is a tradition in New Jersey, but one the state can no longer afford. The price tag is measured not just in dollars. This pernicious practice disturbs the balance of the political system, reduces accountability, promotes parochialism over regionalism, divides the attention of elected officials and arguably contributes to the erosion of public confidence in government because of the conflicts of interest and incompatibility of duties that it creates.

Those arguments gained some force following the spotlight the state's Gannett newspapers focused on corruption in state government in 2003. In response to the ensuing public clamor, the Legislature passed many bills with the stated purpose of reducing influence peddling and conflicts of interest. But none of the bills to restrict dual office holding, or even study the practice, made it through both houses. Even a bill sponsored by the Assembly Speaker and the Assembly Majority Leader failed to make it through the process. That bill, A 3948, would have prohibited a legislator from holding local office, but would have allowed someone to hold both municipal and county elected office. The bill would have allowed current legislators who also hold municipal or county positions to keep them until the end of their current legislative term. Even with that "grandfathering" provision, the measure failed to be enacted.

In addition to the resolution to set up a commission to study dual office holding, two other bills in the 2004-05 legislative session addressed the issue. A 1669, sponsored by Assemblymen David Russo and Kevin O'Toole, would have banned legislators from simultaneously holding a county or municipal elected or appointed office, and banned anyone from holding more than one municipal or county elected or appointed position. The ban would have taken effect on January 1 of the fourth year after enactment, allowing current dual office holders time to decide what office they wished to keep. A 181, sponsored by Assemblyman John Gibson, would have barred any legislator from holding any other elected office, effective on the day the legislator took his or her seat. Both bills were assigned to the Assembly State Government Committee. Both died there without further consideration.

# *Reform Stymied*

Constitutional framers in most states were concerned enough about the ill effects of dual office holding to ban or limit some aspects of the practice. Some states that did not originally include such limitations in their constitutions subsequently adopted amendments to limit dual office holding. Some provisions guard against legislators creating jobs for themselves by establishing new positions in government. Others ban nearly every holder of public office from serving state or local government in any other capacity:

- 40 states ban legislators from holding federal office.
- 36 states ban legislators from holding other state office.
- 24 states ban legislators from holding offices that were created or the salaries of which were raised during their term.
- 11 state constitutions ban holding multiple elected offices of any kind, including municipal and county offices, as well as state and federal offices.

Only two state constitutions, New Mexico and New York, explicitly permit holding multiple offices.

New Jersey's limits on dual office holding distinguish between *forbidden* offices and *incompatible* offices.<sup>15</sup> New Jersey's Constitution of 1844 (replaced by the current constitution ratified in 1947) flatly prohibited appointment of a legislator to "any civil office under the authority of this state, which shall have been created, or the emoluments whereof shall have been increased" during that legislator's term. This ban was carried over into the current constitution.<sup>16</sup> But the constitution does not bar local elected officials from serving simultaneously in the Legislature.

The 1947 constitutional convention considered, but did not adopt, sweeping limitations on dual office holding. Thomas Taggart, a lawyer and former state senator from Atlantic County, wrote to the convention arguing for a constitutional ban on local elected officials serving simultaneously in the Legislature. His clear-sighted and forceful argument bears repeating:

The present legislative draft only prohibits a legislator from holding a federal or state position at one and the same time with his position in the Legislature. This should be extended to prohibit the holding of county and municipal positions. With the increase of salaries of legislators, there can no longer be any excuse for any type of dual office-holding by a legislator. . . A member of the Legislature can use his position in the Legislature to increase both his power and his salary in a municipal or county office; he can use the power of his legislative office to keep him perpetually in his municipal or state office, and further, since no man can serve two masters well and do justice to both at one and the same time, the dual office-holding shall be prohibited by constitutional provision. Dual office-holding has become a political technique whereby, through the combined powers of two offices, a dual job holder is able to perpetually entrench himself in both offices, which is contrary to democratic principles.<sup>17</sup>

At the time Taggart wrote, the salary for New Jersey legislators was just \$500 a year (equivalent to \$3,700 in 2005 dollars), compared to \$49,000 today. The state budget totaled just \$165.6 million (equivalent to \$1.2 billion), while the state's functions were far more limited. The current state budget is over \$28 billion.

The New Jersey League of Women Voters advocated for the same position Taggart recommended. Commenting on a draft of the new constitution, the League urged the convention to forbid anyone holding a position of profit in the state or in local government from serving in the Legislature. It recommended this language:

No member of Congress, no person holding any office, position or appointment of profit under the government of this State or any of its civil divisions, or of the United States, and no judge of any court shall be eligible to a seat in the Legislature.

The League argued that the three-part ban (local, state or federal positions) was necessary to cover all aspects of the problem:

It is considered desirable that (1) persons already holding federal or other state office should be ineligible to sit in the Legislature; (2) persons in the Legislature should forfeit their seats upon acceptance of other public office; (3) the Legislature should be discouraged from creating jobs expressly for any of its members. Constitutional prohibitions on dual office-holding have existed since 1776. Prohibitions similar to the above are contained in the present Constitution, and were included in the 1942 and 1944 drafts. Dual office-holding is contrary to the theory of separation of powers; it prevents independent judgment by the law-maker; it may cause the slighting of one of the offices held, and it may be a form of coercion or bribery.<sup>18</sup>

The Convention did not take the advice of former Senator Taggart or the League. It retained the narrower limits on dual office holding of the previous constitution. Those limits did not, and do not, affect legislators holding local elected office. The only limitations on those offices have been the result of court decisions on incompatible office.

# *Legal Background*

New Jersey's constitution and statutory law were silent on the subject of dual office holding until 1962. Disputes over the practice were resolved by the courts applying the common law principle of incompatible offices. New Jersey Chief Justice Joseph Weintraub, writing for the state Supreme Court in *Reilly v. Ozzard* in 1960<sup>19</sup>, defined "incompatibility" as:

[A] conflict or inconsistency in the functions of an office. It is found where in the established governmental scheme one office is subordinate to another, or subject to its supervision or control, or the duties clash, inviting the incumbent to prefer one obligation to another.

In *Jones v. MacDonald* that same year, the court sharpened the definition:

The common law against dual office holding is not limited to cases in which one office is subordinate to the other, but embraces all situations in which duties of office clash in their demands with [the] result that incumbent must choose between them. . . .if the duties are such that placed in one person they might disserve the public interests, or if the respective offices might conflict on rare occasions, it is sufficient to declare them legally incompatible.<sup>20</sup>

The next year, the state Supreme Court seemed to threaten the practice of dual office holding. In *McDonough v. Roach*, it found the holding of the offices of county freeholder and township mayor to be incompatible.<sup>21</sup> The decision highlighted the inherent conflict in Dover Township mayor John Roach also serving as a Morris County freeholder:

In the negotiations [between county and township] the county board is bound to consider the interests of all its citizens, while the local governing body has a like obligation to the citizenry of the municipality alone. No man, much less a public fiduciary, can sit on both sides of a bargaining table. He can-

not in one capacity pass with undivided loyalty upon proposals he advances in his other role.<sup>22</sup>

The Legislature, where—then as now—many local officials served, responded to this ruling’s assault on the comfortable status quo by passing a bill to modify the common law rule of incompatibility. It carved out an exemption from the doctrine of incompatibility to permit local elected or appointed officials to serve as freeholders or in the Legislature.<sup>23</sup>

Gov. Richard J. Hughes conditionally vetoed the legislation, but only because he objected to allowing local officials to also hold appointive positions. He did, however, believe that local officials and employees should be permitted to serve in the Legislature because “a person who holds elective office must periodically submit to the people an accounting of his stewardship. His dual office holding is open for all to see and can be terminated whenever his constituents so decide.” In Hughes’s opinion, dual office holding was in accord with New Jersey tradition:

In New Jersey we rely upon individuals to serve in the Legislature as a part-time duty. They are expected to derive their livelihood and that of their families from other activities, public and private. Application of the common law doctrine [of incompatibility] to this area could effectively remove from legislative deliberations all persons connected with public life. This could only work to the ultimate detriment of the general public.<sup>24</sup>

Governor Hughes drew the line when it came to holding an elective local office and an appointed one.

The public may not be aware that a single individual is holding two offices which have duties and responsibilities potentially or actually in conflict. . . . Considering the very real possibilities for actual conflict, I can find no overriding justification for permitting local officeholders or employees to hold an additional office or appointive positions where incompatibility does in fact exist between the duties and obligations of such offices and positions.<sup>25</sup>

The Legislature modified the bill in accord with the Governor's conditions, and the resulting statute remains in effect today.

In the more than 40 years that have passed since Hughes's conditional veto, the responsibilities of state government have expanded and safe districts have reduced the accountability of legislators to the voters. Perhaps in the 1960s, local officials brought a point of view to the Legislature that would otherwise have gone unrepresented. Now that local point of view is clearly overrepresented. The exemption from the common law rule of incompatibility is no longer warranted.

Former Assemblyman Joseph Azzolina recognized that fact during the discussion of a dual office holding bill in the Assembly State Government Committee last year. "We have too many mayors, too many elected council people [serving as legislators]," Azzolina said. "A freeholder is going to do what's best for his county. A mayor is going to do what's best for his town. I think (legislators) have to think beyond your own town (or district). You have to vote for the people in general."<sup>26</sup>

The increasingly precise formulation of the "incompatibility" by the New Jersey Supreme Court strengthens the conclusion that the 1962 exemption has outlived whatever usefulness it once may have offered. Writing in *Belleville Township v. Fornarotto* in 1988, the court prescribed a three-fold test to determine when offices are incompatible:

Offices are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper to for an incumbent to retain both.<sup>27</sup>

A legislator arranging for state funds to be granted to the town where that legislator also serves as mayor fails each aspect of the three-part test established in this case. The legislator's action is not faithful, not impartial and not efficient: It is not faithful because the legislator's duty to balance local needs with state resources clashes with the mayor's duty to get the most for the town. It is not impartial because the legislator/mayor's town gets special consideration. It is not efficient because the need in other towns, even towns in the same district, may be more pressing. Yet the courts will not, and perhaps should not, solve this problem. (In *Schear v. City of Elizabeth*, the

court, writing soon after the enactment of the statute exempting dual office holding from the common law ban on incompatible office, observed that “if the lawmakers acting . . . as the architect(s) of the structure of government, ordain that one person may or may not hold two public offices, the judiciary cannot interfere.”<sup>28</sup>) To lower the costs, economic and political, to New Jersey created by dual office holding, New Jersey must turn to the political system.<sup>29</sup>

# *An Ethical Framework*

The case against holding state and local office simultaneously must rest on ethical and practical grounds, not on the constitution or current statute. The legislator/mayor who secures a grant for his or her town has committed no conflict-of-interest crime. He or she is instead entangled in a comparably serious—albeit legal—“conflict of obligations.” A legislator represents a local district but is a *state* official. As such, the legislator is obligated to balance local needs against statewide requirements. For dual-office holders, that obligation collides with the obligation of local officials to get the most for their towns. Reconciling these conflicting obligations is often impossible. Even if the legislator/mayor resolves the conflict to his or her own satisfaction, the process of resolution is invisible to the public. It takes place entirely in one person’s mind and hence lacks the transparency needed for accountability.

The rules for dual office holding should be set in legislation based on clear ethical principles that would promote transparency, diminish conflicts of obligation, enhance electoral competitiveness and encourage participation in the political process.

- **Transparency is widely recognized as a prerequisite of democratic government.** Without the right to know, the value of the right to vote is diminished. When it comes to conflicts of interest, New Jersey’s developing approach is based on disclosure. Disclosure of competing interests, for example a legislator’s financial interest in a corporation seeking a state contract, shines a light on the situation that allows the public to consider the circumstances at election time. Dual office holding hides the process of reconciling conflicting obligations. No one should be his or her own judge in a case, yet the dual office holder is the only judge of how to reconcile competing interests.

The courts have recognized that vesting this responsibility exclusively with the dual office holder is unwise. In *Jones v. MacDonald* the court reasoned on practical grounds:

Public policy demands that office holders discharge their duties with undivided loyalty. The doctrine of incompatibility is intended to assure performance of that quality. Its applicability does not turn upon the integrity of the person concerned or

an individual's capacity to achieve impartiality, for inquiries of that kind would be too subtle to be rewarding. The doctrine applies inexorably if the offices come within it, no matter how worthy the officer's purposes or extraordinary his talent.<sup>30</sup>

- **The political system should be designed to diminish the conflict of obligations** that arises from serving in two offices that are fundamentally, if not under law, incompatible. Discharging the duties of the two offices faithfully, impartially or efficiently is simply not possible. An ethical statute restricting dual office holding would prevent office holders from being put in a position where they must inevitably fail to live up to their oaths of office. As Earl Morgan observed in a column in the *Jersey Journal*, the problem is not that public officials in this position are unethical. The problem with dual office holding “is that it puts even ethical people in a position where it becomes too tempting to make unethical choices.”<sup>31</sup>
- **Competition can make the political market work efficiently in the same way that it can make the economy work efficiently.** To reduce competition is to undermine democracy. Yet dual office holding reduces political competition, and can flourish only with a lack of competition.

It is no coincidence that in 2005, all the dual office holders represented safe districts in the Legislature. In competitive districts, they would be vulnerable in an election to charges of conflict of obligation, to slighting the demands of one position in favor of another and to blocking the political ladder from those who wanted to advance their interests. By directing state funding to a local community, dual office holders can, in effect, campaign with public money using resources not available to their opponents. State-funded improvements to the local park, special aid for sewer construction or grants for police equipment provide opportunities for positive press releases, photos of ribbon cuttings and greater visibility. Incumbents almost always have an edge, but the advantage of the dual officer holder exceeds a test of ethical reasonableness. For example, dual office holders can receive contributions into two separate election funds, further decreasing their vulnerability to political challenges while making them more susceptible to the influence of those prepared to pay to play.

Dual office holding, then, can discourage potential opponents from entering the fray, knowing that even if they win, the former legislator will, as mayor, remain in a position to undercut the new legislator. Who would want to run against a legislator knowing that victory could incur the wrath of the same person as mayor, or vice versa?

## *The Citizen-Legislator*

The citizen-legislator, an ideal embedded in New Jersey's political culture, deserves consideration in evaluating dual office holding. Although several legislators serve full-time, the state constitution contemplates that Senators and members of the Assembly will be part-time citizen-legislators. They will have outside interests and employment that they will bring to bear on the legislative process. Indeed, the way conflicts of interest are defined for legislators includes an exception for the citizen-legislator. A legislator may vote on a bill that affects personal interests so long as it does not affect him or her differently from other members of a business, profession, occupation or group to which he or she may belong. For example, a legislator may vote on a bill that lowers the taxes he pays so long as that reduction applies to an identifiable and sufficiently large class of taxpayers of which he is a part. Without that exception, legislators would be required continually to refrain from voting on the regulation of professions, various forms of commerce, land use and possibly even tax rates. Few outside occupations are regarded as per se conflicts of interest for a citizen-legislator; among them is lobbying.

Dual office holding undermines the ideal of the citizen-legislator. Public officials from local governments, both elected and appointed, constitute almost a third of that body, a higher percentage than practicing lawyers. When a substantial fraction of the Legislature is made up of those whose income and interests are entirely involved in politics and government, the legislative body does not reflect the community but holds up to it a distorting funhouse mirror. Its perspective and experience differ from the community's.

In an article based on their report on ethics submitted to Gov. Richard Codey in March 2005, Professor Paula Franzese of Seton Hall Law School and retired Justice Daniel J. O'Hern concur:

It strikes us that what are we are seeing is the development of a cadre of career politicians/officeholders who have no life outside of politics. It was once the case that, at the local level, public office was for the most part an uncompensated position. People did it because they wanted to serve their municipalities, not combine its emoluments with another public job. Granted, the business of government is much more complex

today, but the basics remain the same. We cannot turn back the clock and it may be wishful thinking, but we think that politics should be rooted in public service, not personal enrichment.<sup>32</sup>

*Dual office holding, it can be argued, raises the political stakes for participants.* With these high stakes, the practice of politics can become even more expensive and vicious. When a legislator is solely employed in government, more than a public office is at stake in an election: the legislator's livelihood and position in society are at risk. The scramble for campaign contributions becomes more urgent and the cost of elections soars. Placating the party organization whose backing is needed to continue in office becomes a priority. Any campaign tactic likely to increase the chance of victory becomes acceptable. In short, dual office holding is part and parcel of a political system that degrades the tone and texture of public life.

# *Tackling the Status Quo*

Supporters of dual office holding offer a number of arguments in favor of the practice. Here is a look at them and why they fail to survive evaluation in the ethical framework established above.

## **Urban mayors serving in the Legislature speak up for the needs of their cities in a body where suburban interests form a majority.**

The configuration of legislative districts ensures, however, that a prudent legislator representing an area will seek the views of local officials without being one. Indeed, the legislator may be more effective if *not* a part of local government because an independent advocate cannot be held responsible for problems within the city government. Experience in local government can sharpen a legislator's understanding of the issues confronting the city, but that experience need not be concurrent with service in the Legislature.<sup>33</sup> And the value of that experience can be overstated, as it was by Assemblyman John F. McKeon, the mayor of West Orange. In a committee discussion of dual office holding he said, "The expertise that I believe I bring to the table relative to my position in municipal government is no less than a doctor would bring on health care issues." Most of all, this argument fails to meet the test that New Jersey's treatment of dual office holding should reduce the conflicts of obligation that are unavoidable when local officials also serve in the Assembly or Senate.

## **The added power of a legislator who is also a local elected official counterbalances New Jersey's extraordinarily powerful governor.**

This assertion has some basis in the reality of politics. But from an ethical perspective, the price of the added power is more than New Jersey can afford. The mayor/legislator can use the position in Trenton to disguise failures at home, shore up the city's budget inappropriately and even prevent the appointment of a prosecutor or other official who might investigate problems the mayor/legislator would prefer go unexamined. The combined power of the two offices, with its inherent fundraising advantage, reduces competitiveness and ultimately undermines public accountability.

**Dual office holding should not be banned until these elective offices are made full-time.**

The average New Jersey municipality comprises about 14 square miles, is home to 15,000 residents and has no full-time mayor or council. The New Jersey Legislature has always been seen as a citizen-legislature, and should, in fact, have more, not fewer, true citizen legislators. The importance of state and local politics and government should be kept in reasonable perspective, with fewer leaders, not more, totally dependent on their public service for their income and position in the community. The personal stakes of elective politics should be lower, not higher. A full-time Legislature might well be a good idea for New Jersey, but that is an issue separate from the need to achieve under the current system transparency, competitiveness and accountability for better government.

**“Let the voters decide!” is the most appealing argument put forward by those who want dual office holding to continue undiminished. If the voters in the local community do not believe the mayor’s attention should be divided by service in the Legislature, they can vote for the opponent in either the municipal election or the legislative election.**

In fact, the political process often is not open. Most dual office holders come from safe, one-party districts, where incumbents lose mostly in primaries. Thus the argument to leave it all up to the voters fails the tests of competitiveness, transparency and participation. It is not clear that in all cases of dual office holding voters even know they have elected the same person to two positions, especially when the elections take place in different years.

In his conditional veto of the 1962 legislation to provide statutory protection for dual office holding, Governor Hughes distinguished between holding two elected offices and holding one local elective and another local appointed position. Hughes’s argument is undercut by the increasing number of legislative districts that are drawn to be safe for one party or another. Accountability to the public has declined, and the elective offices are more insulated from actual public accountability. In fact, in safe districts, nomination by the dominant party is tantamount to election, and that nomination is, in effect, an appointment by the effective party leader in the county.

# *What New Jersey Should Do*

New Jersey should ban dual *elective* office holding now. This restriction need not take the form of a constitutional amendment; it can be accomplished by statute. This ban would be a reasonable start even if does not resolve all the issues raised by dual office holding.

As Franzese and O’Hern note:

Dual-office holding at any level of government creates the obvious potential for abuses of power. The recent investigation of corruption among Monmouth County officials revealed that many of the eleven charged held dual offices. Gaining authority and prestige in local office, those individuals peddled their influence into other venues, e.g., a mayor becomes a Parkway or county employee, and uses his clout at home to leverage his pay or position. The recently charged mayor of Marlboro is a member of the State Violent Crime Commission. Monmouth County has already taken steps to solve this problem, but there should be a statewide solution.<sup>34</sup>

The statute might adopt the wording that League of Women Voters recommended to the constitutional convention almost 60 years ago: “No person holding any office, position or appointment of profit under the government of this State or any of its civil divisions . . . shall be eligible to a seat in the Legislature.”

Wording in the North Carolina constitution goes further and includes a commendably democratic rationale:

It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this

State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.<sup>35</sup>

If New Jersey were to move in this direction, one issue to address is how to treat those who hold dual offices at the time the practice is banned. During consideration of a 2003 reform package, some Democrats moved to “grandfather” current members of the Legislature who held local office—meaning a ban on dual office holding would affect only future legislators. Sen. Bernard F. Kenny Jr. observed, “The members of my caucus are supportive of grandfathering the current dual office holders. . . which would mean, given the normal cycle of politics, that it would be somewhere around eight years before you’d have the full eradication of dual-office holding.”<sup>36</sup>

Passing a ban effective at the start of the next legislative session would be preferable to this more extended phase-out period. Such a prolonged approach is not warranted; the need to remove the conflicts created by dual office holding is more urgent than the need to consider inconvenience caused to dual office holders by changing the rules.

Public opinion surveys suggest a mixed public mind on dual office holding. In a Gannett New Jersey poll in 2003, 60 percent of respondents said lawmakers should not be permitted to hold other public jobs (27 percent favored the practice). A *Star-Ledger/Eagleton* Poll that in 2004 asked respondents to choose from among several options as the “most effective way” to combat political corruption found more support for banning pay-to-play arrangements and turning the Attorney General into an elected office.

Local officials, on the other hand, are both influential in Trenton and united in their opposition to limit their own ability to serve simultaneously in the Legislature. In a survey by the League of Municipalities, 96 percent of local elected officials supported dual office holding. Those who see the need to end dual office holding have their work cut out for them.

# Conclusion

Even at the height of the legislative reform efforts that swept through Trenton a couple of years ago, the Legislature was less enthusiastic about confronting problems caused by dual office holding than it was about dealing with so-called “pay-to-play” or other features of the political system that shook public faith in the institution. Now, with a new governor and Legislature, the time is ripe to reopen a public debate about this practice and engage the average New Jerseyan in the conversation. This subject is not, as it might seem on the surface, the most esoteric kind of “inside baseball.”

Dual office holding is a fundamental part of the institutional arrangements in New Jersey, creating conflicts of obligation, eroding accountability and promoting parochialism. By creating a class of elected officials whose entire lives are embedded in politics and government, dual office holding raises the stakes of politics unacceptably high and erodes the ideal of the citizen-legislator. It encourages expensive, cut-throat campaigns and protects elected officials from competition. Perhaps most serious for the long term well-being of New Jersey, it strengthens the most counter-productive aspects of our home-rule tradition.

For an example of dual office holding’s impact on policy matters, consider the generation-long effort to provide affordable housing in growing suburban communities. Some legislators regularly assail the Supreme Court for its *Mount Laurel* decisions—which directed developing suburban towns to plan and zone for affordable housing—asserting that the subject of those suits should be considered by the elected branches of government, not the judiciary. But proposals by several governors to ensure that zoning promoted the general welfare rather than simply serving one town’s needs died in the Legislature. The state’s housing policy was reduced to “the sum of the exclusionary-zoning rules of its many municipalities.”<sup>37</sup>

One study of the *Mount Laurel* decisions points to the role of dual office holding in the Legislature’s failure to address the affordable housing issue:

New Jersey’s Legislature has a longstanding reputation for parochialism. . . . A number of legislators wear two political caps: they are both state and local officials, town council

members and assembly members or senators. From the late 1960s on, these lawmakers were offered proposal after proposal by Republican and Democratic governors alike, but they did nothing. “Home rule”—local, not legislative, rule—was their prayer and their rallying cry.<sup>38</sup>

Housing policy, growth plans, tax policy, equitable education funding, transportation and economic development all are key issues for the future of the state. Policies in those areas are seen differently when refracted through the lens of dual office holding.

Banning dual office holding will tend to make legislators more accountable, increase competition and open up the political process to new aspirants. Most of all, it will make more transparent the weighing of local interests with statewide or regional concerns. The ban will not magically create wise policy, nor will it end all conflicts of interest or obligation. But the price of this dubious New Jersey tradition has become too high for whatever benefits it might once have promised. Former Assembly Speaker Alan Karcher put it well in rejecting the justifications offered by those who hold or aspire to hold more than one elective office:

The question today is not the validity of the defense, but the weight to be accorded these factors when placed in the scale to be measured against the arguments of cost and efficiency of the services distributed at the local level.<sup>39</sup>

When legislators are no longer local officials themselves, they will still heed the views of local officials. More often than not, they will continue to empathize with those views because they will have served in local office before entering the Legislature. But their obligations will be clearer, and they will be more likely to focus on the broader perspective due to their greater distance from local office.

Times change. As Chief Justice Weintraub observed in *McDonough v. Roach*, “As government becomes more complex and additional roles are assigned, the opportunities for dual office holding must inevitably diminish. What remains constant is the demand of sound public policy that the incumbent act with undivided devotion to duty.”<sup>40</sup>

The time is overdue for a return to the citizen-legislator.

## *Appendix: New Jersey's Dual Office Holders*

### **LEGISLATURE AND MUNICIPAL OR COUNTY OFFICE**

John Burzichelli – Assembly (Dist. 3), Mayor of Paulsboro Borough, Gloucester County  
 Leonard Connors – Senate (Dist. 9), Mayor of Surf City, Ocean County  
 Ronald Dancer – Assembly (Dist. 30), Mayor of Plumsted Township, Ocean County  
 Joseph Doria – Senate (Dist. 31), Mayor of Bayonne, Hudson County  
 Joseph Egan – Assembly (Dist. 17), New Brunswick City Council  
 Mims Hackett – Assembly (Dist. 27), Mayor of Orange, Essex County  
 Valerie Vainieri Huttle – Assembly (Dist. 37), Bergen County Freeholder  
 Sharpe James – Senate (Dist. 29), Mayor of Newark  
 Marcia A. Karrow – Assembly (Dist. 23), Hunterdon County Freeholder  
 John McKeon – Assembly (Dist. 27), Mayor of West Orange, Essex County  
 Paul Moriarty – Assembly (Dist. 4), Mayor of Washington Township, Gloucester County  
 John Rooney – Assembly (Dist. 39), Mayor of Northvale Borough, Bergen County  
 Nicholas Sacco – Senate (Dist. 32), Mayor of North Bergen, Hudson County  
 Paul Sarlo – Senate (Dist. 36), Mayor of Wood-Ridge, Bergen County  
 Gary Schaer – Assembly (Dist. 36), Passaic City Council  
 Robert Singer – Senate (Dist. 30), Lakewood Township Committee, Ocean County  
 Albio Sires – Assembly (Dist. 33), Mayor of West New York, Hudson County  
 Brian Stack – Assembly (Dist. 33), Mayor of Union City, Hudson County  
 Stephen Sweeney – Senate (Dist. 3), Gloucester County Freeholder  
 Joseph Vas – Assembly (Dist. 19), Mayor of Perth Amboy, Middlesex County

### **MUNICIPAL AND COUNTY OFFICES**

D. Bilal Beasley – Essex County Freeholder, Irvington Township Council  
 Bruce Bobbitt – Salem County Freeholder, Pilesgrove Township Committee  
 Elizabeth Calabrese – Bergen County Freeholder, Wallington Borough Council  
 James Carroll – Bergen County Freeholder, Mayor of Demarest Borough  
 Leonard Desiderio – Cape May County Freeholder, Mayor of Sea Isle City  
 Frank J. DiMarco – Gloucester County Freeholder, Deptford Township Council  
 Frank Druetzler – Morris County Freeholder, Mayor of Morris Plains Borough  
 Cecilia Laureys – Morris County Freeholder, Netcong Borough Council  
 Pat Lepore – Passaic County Freeholder, Mayor of West Paterson Borough  
 David Lindenmuth – Salem County Freeholder, Woodstown Borough  
 Anna C. Little – Monmouth County Freeholder, Highlands Borough Council  
 Bernadette McPherson – Bergen County Freeholder, Mayor of Rutherford Borough  
 Steven V. Oroho – Sussex County Freeholder, Franklin Borough Council  
 Douglas M. Rainear – Cumberland County Freeholder, Upper Deerfield Council  
 Tilo Rivas – Hudson County Freeholder, Union City Commissioner

Sue Schilling – Atlantic County Freeholder, Brigantine Beach Council

Jack Schrier – Morris County Freeholder, Mendham Township Committee

Blanquita Valenti – Middlesex County Freeholder, New Brunswick City Council

Silverio Vega – Hudson County Freeholder, West New York Commissioner

List is as of March 28, 2006

### *About the Author*

**T**om O’Neill is a public policy consultant with more than 35 years of experience with New Jersey issues. He was President of The Partnership for New Jersey until his retirement last year. Before joining The Partnership in 1984, he was President of the Center for Analysis of Public Issues and edited its magazine, *New Jersey Reporter*. O’Neill served on the Borough Council in Pennington, but did not run for that post until stepping down from a senior position in a state agency.

## End Notes

- <sup>1</sup> Howlett, Deborah. "For some Jersey lawmakers, 2 jobs add up to 1 big pension." *The Star-Ledger*. March 3, 2006. P. 1. "Five newcomers kept the public offices they held before winning election in November. Assemblywomen Valerie Vanieri-Huttle (D-Bergen) and Marcia Karrow (R-Hunterdon) are freeholders. Assemblyman Paul Moriarty (D-Gloucester) is mayor of Washington Township. Assemblywoman Pamela Rosen Lampitt (D-Camden) serves on the Cherry Hill township council. Assemblyman Gary Schaer (D-Passaic) is on the Passaic city council. 'The people overwhelmingly voted me in and I feel obligated to complete my term,' said Vanieri-Huttle, who said she won't seek re-election as a freeholder when her term expires this year. She added, 'It's very difficult, in my opinion, to have two offices.' Two freshmen gave up their other offices. Assemblywoman Amy Handlin (R-Monmouth) stepped down after 15 years as a freeholder. Assemblywoman Jennifer Beck (R-Monmouth) resigned her seat on the Red Bank borough council. 'I don't think it's appropriate and I don't think it's doable,' Beck said. 'You can't fully commit yourself to two elected positions. It's impossible to manage local priorities and larger responsibilities of a legislative district. In the end, somebody gets shortchanged.' Beck has introduced a bill to make dual office-holding illegal. But in a Legislature where so many members hold two offices – Assemblyman Albio Sires was speaker of the lower house and mayor of West New York for four years – such measures find little support."
- <sup>2</sup> Symons, Michael. "Variety of ethics reforms come before legislators." *Asbury Park Press*. May 6, 2004.
- <sup>3</sup> N.J.S.A. 40A:9-4. The statute, Chapter 173 of the Laws of 1962, was carried over into the revision of Title 40A in 1971.
- <sup>4</sup> Dagan, David. "Who's the boss? Legislators with other government jobs." The Center for Public Integrity. September 24, 2004. [www.publicintegrity.org](http://www.publicintegrity.org) "In New Jersey, fully one third of the legislators drew income from other public employment—44 percent when spouses' salaries were added. Delaware ranked second, with 23 percent of legislators or their spouses."
- <sup>5</sup> Dēmos compiled a database of New Jersey state legislators, county elected officials, and local elected officials from government websites and the New Jersey State League of Municipalities and cross-checked the names to identify potential dual-office holders. It then checked each name that appeared under multiple offices against official government websites and biographies to determine if the multiple offices were indeed held by the same person rather than by two people with similar names. The result: 39 elected officials held multiple elective offices (26 Democrats and 13 Republicans). The 78 offices held by these dual elective office-holders included 21 mayors, 20 freeholders, 16 municipal council or committeepeers, 14 members of the Assembly and 7 Senators. They are listed in the Appendix of this report.
- <sup>6</sup> "Bergen freeholders ideas; Republicans offer the best." *The Record*. Editorial. November 3, 2005.
- <sup>7</sup> "A double whammy." *The New Jersey Law Journal*. Editorial. February 16, 2004. Senator/Mayor James sponsored a bill to ban dual office holding for local officials from cities with more than 100,000 population. It did not pass. James told *The Star-Ledger* he would have no problem relinquishing the mayor's office if his bill became law. But he has no plans to do so until then. "Why should I step down?" he asked. "If it's illegal, fine. Until such time, I will be the best senator for the 29th District and the best mayor of New Jersey's largest city."
- <sup>8</sup> McNichol, Dunstan. "Democrats spread end-of-year cheer by doling out gifts." *The Star-Ledger*. January 5, 2006.
- <sup>9</sup> Karcher, Alan J. *New Jersey's Multiple Municipal Madness*. Rutgers University Press. 1998. p. 202.
- <sup>10</sup> Hester, Tom. "Corzine prods towns to regionalize." *The Star-Ledger*. March 16, 2006.
- <sup>11</sup> Howlett, Deborah. "A chef, a mortician but not a lawyer in the bunch." *The Star-Ledger*. January 15, 2006.
- <sup>12</sup> Quinn, Richard. "No ethical problems in holding multiple public jobs, legislator and mayor says." *Asbury Park Press*. September 23, 2003. Dancer faced two opponents in the 2003 legislative election. Both were local elected officials,

one a deputy mayor in Lakewood and one a committeeman in Jackson Township.

<sup>13</sup> Panter, Michael J. "Ban dual office-holding." Letter to the Editor. *Atlantic Highlands Herald*. June 10, 2004.

<sup>14</sup> Dagan, op.cit.

<sup>15</sup> See generally "The Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention." Volume 2 of the papers of the 1947 Constitutional Convention. This material was prepared for the use of the delegates to the Convention.

<sup>16</sup> Art. IV, sec. V, 1. Also prohibited by this Article are serving in the state Legislature after election to the U.S. Congress, or after appointment to any paid federal or state office or after appointment as a judge. These fundamental principles regulating dual office holding were, in fact, included in New Jersey's first constitution in 1776. Questions of dual office holding were litigated early in the state's history. "To make absolutely sure that the legislative department would be 'preserved from all suspicion of corruption,' the court in the case of *State v. Parkhurst* 49 N. J. L. 427 (Appendix) (1802) held that under Article 20 . . . a legislator who . . . accepted an appointment as clerk of the Court of Common Pleas and Quarter Sessions of the Peace, of the County of Essex . . . was held eligible to accept the appointment as clerk, but by his acceptance he was also held to have vacated his seat in the Legislature." See "The Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention." p. 1476.

<sup>17</sup> N.J. Constitutional Convention: Vol. 3, P. 898.

<sup>18</sup> *Ibid*, p. 849 – 854.

<sup>19</sup> 33 N.J. 529, 166 A. 2d 360, 89 A.L.R. 2d 612 (1960)

<sup>20</sup> *Jones v. MacDonald*, 33 N.J. 132 (1960)

<sup>21</sup> *McDonough v. Roach*, 35 N.J. 153, 171 A.2d 307 (1961)

<sup>22</sup> See the dissent by justices Jacobs and Schettino in *Ahto v. Weaver*, 39 N.J. 418, 189 A.2d 27

<sup>23</sup> L. 1962, c. 173

<sup>24</sup> Conditional Veto Message to the General Assembly on Assembly Bill 491, Gov. Richard J. Hughes, November 15, 1962, p.2.

<sup>25</sup> *Ibid*, p. 3.

<sup>26</sup> Quinn, Richard. "Bills target dual office-holding; Azzolina sponsors bill in Assembly; James in Senate." *Asbury Park Press*. September 27, 2003. p. 6.

<sup>27</sup> 549 A.2d 1267

<sup>28</sup> 41 N.J. 321, 325, 196 A.2d 774, 1964

<sup>29</sup> Some argue that a legislator/mayor's exercises of legislative responsibilities in Trenton and executive responsibilities at home violate the doctrine of separation of powers. That doctrine, explicit in New Jersey's constitution—Article III—turns out not to be a legal bar to dual office holding. Legal opinions addressing this situation have concluded that a state legislator also serving as a municipal executive officer does not impinge on the authority of the state judicial or executive branches. See Robert F. Williams. *The New Jersey State Constitution*. New Brunswick, Rutgers University Press. 1997. p. 55-56.

<sup>30</sup> *Jones v. MacDonald*, 33 N.J. 132, 162 A.2d 817 (1960)

<sup>31</sup> Morgan, Earl. "Structural corruption, personal ethics." *The Jersey Journal*. August 16, 2005.

<sup>32</sup> Franzese, Paula and Daniel O'Hern, Sr. "Restoring the public trust: an agenda for ethics reform of state government and a proposed model for New Jersey." 57 *Rutgers Law Review*, 1175 (2005). It is worth noting that O'Hern once served as mayor of Red Bank. He knows something about the demands of local office and the Monmouth County political scene.

<sup>33</sup> No one would dispute that a U.S. Representative or Senator can speak for the interests of a state without being simultaneously its governor.

<sup>34</sup> Franzese and O'Hern, op. cit.

<sup>35</sup> North Carolina state constitution, Section 9

<sup>36</sup> Symons, Michael. "Dems in 2 offices want to keep both." *Asbury Park Press*. December 5, 2003. p. 11.

<sup>37</sup> Kirp, David L., John P. Dwyer, Larry A. Rosenthal. *Our Town: Race, Housing, and the Soul of Suburbia*. Rutgers University Press. 1995. p. 113.

<sup>38</sup> *Ibid*.

<sup>39</sup> Karcher, op. cit., p. 202.

<sup>40</sup> *McDonough v. Roach*, op. cit.



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