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## Administrative Law—Conflict of Interest Statutes Strictly Applied to Acts of Public Officials

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or sale of securities, where the defendant earned his livelihood from subscription rates. Here, the publishing of the book by respondent corporation could not be deemed in reality a mere incident to its corporate business. After all, its registering with the Securities and Exchange Commission was an admission of the scope of its business activities.

The extent of the investigative powers of the Attorney General, as interpreted in a handful of decisions relating to the Martin Act, is relatively broad in view of the equities involved.<sup>67</sup> In determining whether sufficient facts are shown warranting an order to produce records, courts should not require the measure of proof necessary at a trial. How much evidence is essential the Court of Appeals does not intimate, but in light of the purpose of the Martin Act, *i.e.*, to protect the unwary public from possible fraudulent practices in the securities area, it would appear that very little proof will be required to warrant such an order.

E. J. S.

CONFLICT OF INTEREST STATUTES STRICTLY APPLIED TO ACTS OF PUBLIC OFFICIALS

The New York Legislature has expressed in various statutes the general intent that a local governmental official shall not be interested, directly or indirectly, in any contract to which the governmental unit is a party.<sup>68</sup> It has specifically provided that a village official shall not "act as such in any matter or proceeding involving the acquisition of real property then owned by him for a public improvement."<sup>69</sup> In *Baker v. Marley*,<sup>70</sup> the mayor participated in meetings of the Board of Trustees which adopted resolutions leading to the condemnation of various parcels of real estate, one of which was owned by the mayor. The extent of the mayor's interest in the total property condemned for a municipal parking lot amounted to less than 1%, and he agreed to donate the \$253 proceeds to the village. The mayor's interest in the property was wholly coincidental and his vote was not necessary for the adoption of the resolutions.

In an action to have the resolutions declared void, the complaint was dismissed at Special Term. This action was affirmed in the Appellate Division.<sup>71</sup> The Court of Appeals, one judge dissenting, reversed and held the resolutions void. The Court found that the resolutions and actions of the Board in connection with the acquisition of the property were "matters or proceedings" which involved the mayor in conflicts of interest which the Legislature had intended to prevent. Thus the resolutions were unlawful,<sup>72</sup> in which case

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67. See *People v. Federated Radio Corp.*, 244 N.Y. 33, 154 N.E. 655 (1926). (Where the meaning of fraud within the statute was interpreted to include both intentional and equitable or implied fraud.)

68. *E.g.*, N.Y. Gen. City Law § 3; N.Y. Second Class Cities Law § 19; N.Y. Village Law § 332.

69. N.Y. Village Law § 332.

70. 8 N.Y.2d 365, 208 N.Y.S.2d 449 (1960).

71. 9 A.D.2d 894, 195 N.Y.S.2d 599 (4th Dep't 1960).

72. *Cf. Clarke v. Town of Russia*, 283 N.Y. 272, 28 N.E.2d 833 (1940).

"[p]ublic policy forbids the sustaining of municipal action founded upon the vote of a member of the municipal governing body in any matter before it which directly or immediately affects him individually."<sup>73</sup> The resolution, therefore, were void, even though the vote of the mayor was not required for their passage.<sup>74</sup>

This policy of interpreting the conflict of interest statutes strictly was again followed in *DePerno v. Dulan*,<sup>75</sup> also decided this term. Respondent mayor dismissed petitioner from his position as Chairman of the Municipal Civil Service Commission based upon an alleged conflict of interest. The conflict arose because petitioner was also president of the Teamsters' local which represented employees in the Municipal Public Works Department. Immediately after respondent took office as mayor, the business agent of the local requested a meeting with him to discuss and negotiate an agreement concerning wages, hours and working conditions of the Public Works employees. Before any negotiations had taken place, petitioner notified respondent that the summary replacement of eighty-three Public Works employees with persons chosen by the Department head violated the Civil Service Law, and the rules of the Commission. Petitioner was thereupon dismissed.

The action was sustained in the Appellate Division,<sup>76</sup> but the Court of Appeals reversed holding that there was no conflict of interest. The Court held that the relevant statutes were applicable only to situations where city officers may have financial interest, direct or indirect, in a contract with the city concerning property or services.<sup>77</sup> Since in the present case no contract had been entered into or even negotiated the proceedings were premature. In dicta, however, the Court stated, and Chief Judge Desmond concurred on this point only, that these statutory prohibitions were not intended to embrace labor negotiations or agreements. Thus, even if there was a contract it would not give rise to a conflict of interest.

*Bd.*

TRAFFIC ORDER TO BE FILED WITH DEPARTMENT OF STATE

The defendant, in *People v. Cull*,<sup>78</sup> was charged with a violation of subdivision 4 of Section 56 of the former Vehicle and Traffic Law<sup>79</sup> for driving on a state highway in excess of the speed announced by the State Traffic Commission by a so-called "order." His conviction by a justice of the peace was reversed by the County Court<sup>80</sup> upon the ground, specifically raised by the defendant,

73. *Pyatt v. Mayor & Council of Borough of Dunellen*, 9 N.J. 548, 557, 89 A.2d 1, 5 (1952).

74. *Beebe v. Board of Supervisors of Sullivan County*, 64 Hun 377, 19 N.Y. Supp. 629, aff'd, 142 N.Y. 631, 37 N.E. 566 (1894).

75. 9 N.Y.2d 433, 214 N.Y.S.2d 434 (1961).

76. 11 A.D.2d 904, 205 N.Y.S.2d 1003 (2d Dep't 1959).

77. *Supra* note 68.

78. 10 N.Y.2d 123, 218 N.Y.S.2d 38 (1961).

79. Now N.Y. Vehicle and Traffic Law § 1180.

80. 26 Misc. 2d 668, 210 N.Y.S.2d 10 (County Ct. 1961).