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Michael I. Spak
IIT Chicago-Kent College of Law

Philip Parenti

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CONFLICT OF INTEREST: A TOTALLY IGNORED ILLINOIS CRIMINAL SANCTION AGAINST CORRUPTION IN GOVERNMENT

MICHAEL I. SPAK*

PHILIP PARENTI**

“**W**HERE IS OUR Navy; why doesn't it fight?” was a familiar refrain shortly after the Pearl Harbor attack. In fact, at the beginning of World War II, our nation had no viable sea fighting force—the Navy had no weapons with which to fight. “Where is our state's attorney; why doesn't he fight?” is a possible refrain which could well be utilized today. Today, however, in the war against governmental corruption, the weapon *does exist*.

For over a century,¹ the Illinois State Legislature has explicitly prohibited public officials from maintaining any interests in contracts which conflict with their official functions. The legislature evidenced its concern over conflict of interest in government by attaching criminal sanctions to a violation of this statutory policy.² Although much

* J.D., DePaul University; LL.M., Northwestern University; Professor of Law, IIT/Chicago-Kent College of Law. Professor Spak is the author of *M. SPAK, CASES AND MATERIALS ON MILITARY LAW* (Nexus: 1971) and numerous articles on military and constitutional law.

** J.D., IIT/Chicago-Kent College of Law; (Research) Assistant United States Attorney, Northern District of Illinois. The author's views do not necessarily represent the views of the U.S. Department of Justice.

1. ILL. REV. STAT. ch. 102, § 3 (1872) provided:

INTEREST IN CONTRACTS

§ 3. Not to be interested in contracts—Not to act as attorney to procure—Bribery

It shall not be lawful for any person, now or hereafter holding any office, either by election or appointment, under the constitution of this state, to become in any manner interested, either directly or indirectly, in his own name or in the name of any other person or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. And it shall not be lawful for any such officer to represent, either as agent or otherwise, any person, company or corporation, in respect of any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor shall any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value, as a gift or bribe, or a means of influencing his vote or action in his official character; and any and all contracts made and procured in violation hereof, shall be null and void [1872, April 9, Laws 1871-72, p. 612, § 3].

2. ILL. REV. STAT. ch. 102, § 4 (1872) provided:

§ 4. Penalties

Any alderman, member of a board of trustees, supervisor or county commissioner, or person now or hereafter holding any office, either by election or appointment under the constitution of this state, or any law now or hereafter in force in this state, who shall violate any of the provisions of the preceding sections, shall be deemed guilty of a misdemeanor, and on conviction thereof may be punished by confinement in the

litigation has ensued over the years as to whether certain contracts were void as procured under a conflict of interest,³ the fact remains that Illinois law enforcement authorities have never obtained a conviction under the conflict of interest laws.⁴ A multitude of other states similarly provide criminal statutes for conflict of interest by public officials,⁵ but it appears that only a paucity of criminal prosecutions exists in this area, due in part to the difficulty of proving criminal intent.⁶ However, local prosecutors should also share some of the blame. As one scholarly review maintains: "[W]here prosecutors owe their positions to the patronage of local officials, their interest in shielding the errant ways of their colleagues may sterilize the criminal law."⁷

It is inevitable that when state legislators and city council aldermen pursue outside financial endeavors to supplement their public income, the probability of conflict between private and public econom-

penitentiary for a term not less than one year nor more than five years, or fined in a sum not less than \$200 nor more than \$1,000, or both, in the discretion of the court before which such conviction shall be had; and in addition thereto, any office or official position held by any person or persons so convicted shall, by the fact of such conviction, become vacant, and shall be so declared as part of the judgment of the court; and the person or persons so convicted shall be disqualified from holding any office or position of trust and confidence in this state for the period of two years from and after the date of such conviction [1872, April 9, Laws 1871-72, p. 612, § 4].

3. Peabody v. Sanitary District, 330 Ill. 250, 161 N.E. 519 (1928); People v. Sperry, 314 Ill. 205, 145 N.E. 344 (1924); Kruse v. Streamwood Utilities Corp., 34 Ill. App. 2d 100, 180 N.E.2d 731 (1962); Panozzo v. City of Rockford, 306 Ill. App. 443, 28 N.E.2d 748 (1940); McCarthy v. City of Bloomington, 127 Ill. App. 215 (1906).

4. There are no reported Illinois appellate cases concerned with a criminal prosecution for conflict of interest under ILL. REV. STAT. ch. 102, § 3 or ch. 24, § 3-14-4. The sole discovered case which remotely bears on this issue is People v. Hogan, 257 Ill. App. 206, *transferred*, 335 Ill. 463, 167 N.E. 18 (1930).

In *Hogan*, a *quo warranto* petition was filed against certain village officials praying for removal from office for the misappropriation of village funds by voting the same to themselves in payment of goods and merchandise sold to the village. Section 37 of the Commission Form of Government Act, CAHILL'S ILL. STAT. ch. 24, § 360 provided that

. . . no officer of any such city or village shall be interested, directly or indirectly, in any contract or job for work or materials, or profits thereof, or services to be furnished or performed for the city or village, and that any violation of that section shall be deemed a misdemeanor and punished by a fine of not less than \$100 or more than \$500 and shall be ground for removal from office or employment . . . 257 Ill. App. at 208.

It was held that since section 37 only provided that a violation of the statute shall be *ground for removal from office*, the non-self executing statute required a previous conviction for removal. 257 Ill. App. at 212 (emphasis added). Consequently, the village officials could not be removed from office under a *quo warranto* petition where there was no prior determination of violation of the law.

This technical defense has been eliminated by ILL. REV. STAT. ch. 24, § 3-14-5 (1973) and ILL. REV. STAT. ch. 102, § 4 (1973), which both provide for automatic vacation of office by the offender.

5. See Comment, *Conflicts of Interest in Government Contracts*, 24 U. CHI. L. REV. 361 (1957).

6. *Id.* at 366-67.

7. *Id.* at 367.

ic interest increases.⁸ This is attested to by the ever-expanding number of federal convictions of state and local public officials—which reveals blatant official corruption rampant in Illinois.⁹ This corruption is no less apparent in conflicts of interest maintained by state and municipal officers.¹⁰

This article is constructed to review conflict of interest litigation in Illinois and to ascertain the feasibility of prompting local law enforcement authorities, such as county state's attorneys, to enforce the penal sanctions that now exist.¹¹ One will observe that the Illinois conflict of interest statutes have thus far been used exclusively in civil litigation to void certain contracts and business dealings of public officials. The extensive civil litigation in this area will be examined to derive the

8. Chaet, *The Illinois Governmental Ethics Act—A Step Ahead Toward Better Government*, 22 DEPAUL L. REV. 302, 306 (1972).

9. Convictions of former governor of Illinois and State Revenue Director: *United States v. Isaacs*, 493 F.2d 1124 (7th Cir.), *cert. denied*, 94 S. Ct. 3184 (1974); village trustees: *United States v. Peskin*, No. 73 CR 765 (N.D. Ill. 1973) *appeal pending*, No. 74-1450 (7th Cir. 1974); Cook County Clerk: *United States v. Barrett*, 505 F.2d 1091 (7th Cir. 1974). Chicago aldermen: *United States v. Keane*, No. 74 CR 359 (N.D. Ill.), *appeal pending*, No. 74-1979 (7th Cir. 1974); *United States v. Staszuck*, 502 F.2d 875 (7th Cir. 1974); *United States v. Wigoda*, No. 74 CR 291 (N.D. Ill.), *appeal pending*, No. 74-2007 (7th Cir. 1974); *United States v. Potempa*, No. 73 CR 736 (N.D. Ill. 1974) (guilty plea); *United States v. Kuta*, No. 74 CR 22 (N.D. Ill.), *appeal pending*, No. 74-1920 (7th Cir. 1974); *United States v. Jambrone*, No. 72 CR 805 (N.D. Ill. 1972), *remanded with instructions to dismiss*, No. 73-1514 (7th Cir. 1973).

10. See Conflict of Interest Laws Commission, *Ethical Standards in Illinois State Government* 15-16, 19-30 (Springfield: The Commission 1967); Chaet, *The Illinois Governmental Ethics Act—A Step Ahead Toward Better Government*, 22 DEPAUL L. REV. 302 (1972).

11. ILL. REV. STAT. ch. 102, §§ 3, 4 (1973):

INTEREST IN CONTRACTS

§ 3. Not to be interested in contracts—Not to act as attorney to procure—Bribery

No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. As amended 1949, May 6, Laws 1949, p. 1162, § 1.

§ 4. Violations

Any alderman, member of a board of trustees, supervisor or county commissioner, or other person holding any office, either by election or appointment under the laws or constitution of this state, who violates any provision of the preceding sections is guilty of a Class 4 felony and in addition thereto, any office or official position held by any person so convicted shall become vacant, and shall be so declared as part of the judgment of court. Amended by 1949, May 6, Laws 1949, p. 1162, § 1; P.A. 77-2721, § 1, eff. Jan. 1, 1973.

ILL. REV. STAT. ch. 24, §§ 3-14-4 and 3-14-5 (1973):

§ 3-14-4. Pecuniary interests in contracts—Prohibition

No municipal officer shall be interested, directly, or indirectly, in any contract, work, or business of the municipality or in the sale of any article, whenever the expense,

fundamental rudiments of a conflict of interest violation in order to determine the propriety of criminal prosecutions for this offense. Criminal prosecutions in three separate states, as well as federal prosecutions, will also be examined to construct a framework of elements upon which an Illinois criminal indictment can be based for conflict of interest by Illinois public officials. The purpose of this examination is to assist Illinois state's attorneys by calling the conflict of interest sanction to their attention. Consequently, a thorough examination of conflict of interest in Illinois is the task at hand.

THE CONFLICT OF INTEREST STATUTES

Chapter 24, section 3-14-4 and chapter 102, section 3 provide the focus for Illinois judicial interpretation of public official conflict of interest. While section 3-14-4 prohibits municipal officers from holding an interest in a contract whenever city treasury funds are used to pay for the contract, chapter 102, section 3 prohibits any public official, elected or appointed under the laws of Illinois, from maintaining a contractual interest in which the officer may be called upon to act or

price, or consideration of the contract, work, business, or sale is paid either from the treasury or by any assessment levied by any statute or ordinance. No municipal officer shall be interested, directly or indirectly, in the purchase of any property which (1) belongs to the municipality, or (2) is sold for taxes or assessments, or (3) is sold by virtue of legal process at the suit of the municipality. 1961, May 29, Laws 1961, p. 576, § 3-14-4.

§ 3-14-5. Misconduct of municipal officers—Penalty

Every municipal officer who is guilty of a palpable omission of duty, or who is guilty of willful and corrupt oppression, malconduct, or misfeasance in the discharge of the duties of his office, shall be guilty of a business offense and on conviction, shall be fined not exceeding \$1,000. The court in which such conviction is had shall enter an order removing the convicted officer from office. Amended by P.A. 77-2500, § 1, eff. Jan. 1, 1973.

ILL. REV. STAT. ch. 24, § 4-8-6 (1973):

§ 4-8-6. Pecuniary interest in contracts-Free Service

No officer or employee elected or appointed under this article shall be interested directly or indirectly, in any contract for work or materials, or profits thereof, or services to be furnished or performed for the municipality or for any person operating a public utility wholly or partly within the territorial limits of the municipality. However, in municipalities of less than 15,000 population any officer or employee may provide materials, merchandise, property, services, labor by contract or otherwise, if such items are submitted to sealed bids and the contract covering such items is awarded to the lowest bidder.

No such officer or employee shall request, accept, or receive directly or indirectly, from any person owning, operating, or leasing within the territorial limits of the municipality, and public utility, or any water craft leaving or entering or operating within the municipality any service or transportation upon terms more favorable than are granted to the public generally, or any employment, for hire or otherwise, or any free service or transportation, either for himself or any other person.

A violation of this section is a petty offense. A conviction shall effect a forfeiture of the office or employment.

The prohibition of free transportation shall not apply to policemen or firemen in uniform, nor shall this section affect any free service to municipal officers or employees provided by any franchise or license, granted prior to March 9, 1910. Amended by 1965, Aug. 20, Laws 1965, p. 3167, § 1; P.A. 77-2500, § 1, eff. Jan. 1, 1973.

vote. In either case, whether treasury funds are used or whether a public official acts or votes on his contract, it is a principle of public policy and common law that contracts between public officials and the governing body are void.¹²

In *Sherlock v. Village of Winnetka*,¹³ a case decided prior to the 1872 enactment of chapter 102, section 3, the court held invalid the sale of municipal bonds by the village council to its own members. The sale was declared "void, on the ground that no man can contract with himself."¹⁴ A significant treatise concerning the illegality of this form of municipal contract provides:

The rationale of this application of the principle is that public officers are in a fiduciary relation to the government which employs them. When a representative of a public body is influenced in his official acts by any personal interest, beyond the general interest every citizen has in good government, he is no longer acting solely for the public, which is his duty. To prevent unjust enrichment of such officials, the illegal contract is held void.¹⁵

Chapter 24, Section 3-14-4

The general purpose of chapter 24, section 3-14-4 is to prohibit municipal officers from holding beneficial interests in municipal contracts, for which city treasury funds are paid.¹⁶ In *Village of Dwight v. Palmer*,¹⁷ a clerk of the board of trustees could not retain village funds paid to him for publishing village ordinances. The court responded: "Appellee (Palmer) has received money out of the village treasury under an illegal contract, and under such circumstances as render it against the policy of the law for him to retain it."¹⁸ It was also determined in *Palmer* that a village official's resignation will not validate a contract procured under a conflict of interest.¹⁹

12. *Panozzo v. City of Rockford*, 306 Ill. App. 443, 28 N.E.2d 748 (1940); *Koons v. Richardson*, 227 Ill. App. 477 (1923); *McCarthy v. City of Bloomington*, 127 Ill. App. 215 (1906).

13. 59 Ill. 389 (1871).

14. *Id.* at 399.

15. Ancel, *Municipal Contracts*, 1961 U. ILL. L.F. 357, 366.

16. Municipal officers under § 3-14-4 include: city council aldermen, *McCarthy v. City of Bloomington*, 127 Ill. App. 215 (1906); city judge, *Damron v. City of Eldorado*, 300 Ill. App. 481, 21 N.E.2d 641 (1939); city engineer, *Koons v. Richardson*, 127 Ill. App. 477 (1923); village clerk, *Village of Dwight v. Palmer*, 74 Ill. 295 (1874). See also note 29 *infra*.

17. 74 Ill. 295 (1874).

18. *Id.* at 299.

19. *But see White v. City of Alton*, 149 Ill. 626, 37 N.E. 96 (1894), which held that resignation will qualify a former alderman to bid on a contract authorized while the bidder was a council member.

The court in *McCarthy v. City of Bloomington*²⁰ declared a contract, whereby the city paid funds to an alderman for legal services, violative of chapter 24, sections 5 and 7 prohibiting members of the city council from being interested in contracts paid from the city treasury. The court explained the foundation for such laws. "Sections 5 and 7 . . . in so far as they prohibit officers of municipal corporations from being beneficially interested in contracts for the performance of services and furnishing of supplies to such corporations, are merely declaratory of the common law, which, upon considerations of the highest public policy, affirms such contracts to be illegal."²¹

In 1940, an Illinois appellate court²² applied the revised conflict of interest statute, chapter 24, section 90,²³ to prohibit the chief valuator of the board of local improvements from recovering overtime salary for other work performed for the board. Twelve years later, in *People v. Adduci*,²⁴ the Illinois Supreme Court articulated the common law definition of public official interest forbidden under chapter 102, section 3 and chapter 24, section 9-91.²⁵

The interest against which the prohibition is leveled is such an interest as prevents or tends to prevent the public official from giving to the public that impartial and faithful service which he is in duty bound to render and which the public has every right to demand and receive. Not every interest is a bad or corrupt interest. The desire of every public official to serve the public faithfully necessarily requires him to take a keen interest in the affairs of his office and the prohibition is manifestly not leveled against this interest. Whether or

20. 127 Ill. App. 215 (1906).

21. *Id.* at 217. See also *Damron v. City of Eldorado*, 300 Ill. App. 481, 21 N.E.2d 641 (1939).

22. *Harry Goldstine Realty Co. v. Chicago*, 306 Ill. App. 556, 29 N.E.2d 283 (1940).

23. ILL. REV. STAT. ch. 24, § 90 (1939):

90. Officers not to be interested in contracts, etc. § 7. No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury, or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of said corporation.

In 1941 chapter 24, section 90 was revised to ILL. REV. STAT. ch. 24, § 9-91 (1941):

9-91. Officers not to be interested in contracts. No municipal officer shall be interested, directly or indirectly, in any contract, work, or business of the municipality, or in the sale of any article, whenever the expense, price, or consideration of the contract, work, business, or sale is paid either from the treasury or by any assessment levied by any statute or ordinance. No municipal officer shall be interested, directly or indirectly, in the purchase of any property which (1) belongs to the municipality, or (2) is sold for taxes or assessments, or (3) is sold by virtue of legal process at the suit of the municipality.

24. 412 Ill. 621, 108 N.E.2d 1 (1952).

25. Section 9-91 (see note 23) was revised in 1961 to the present statute, ILL. REV. STAT. ch. 24, § 3-14-4 (1973).

not the interest in any given case comes within the prohibition of the statute may well become a question of construction for the court in view of all the facts and circumstances shown in the particular case In the present case it is alleged that there was a personal financial interest, and certainly, such an interest would come within the prohibition of the law [T]he question really is whether the town officer by reason of his interest is placed 'in a situation of temptation to serve his own personal interests to the prejudice of the interests of those for whom the law authorized and required him to act in the premises as an official.' Nor is it necessary that the statute should enumerate the various kinds of interest which may come within its terms The objectionable interest could consist of any one of numerous interests which would be inconsistent with and repugnant to the duty of the officer to render to the public faithful and impartial service.²⁶

In *Huszgagh v. City of Oakbrook Terrace*,²⁷ the court held that a city contract to pay a city attorney one-third of the sales tax revenue to handle legal matters relating to certain annexation proceedings contravened chapter 24, section 3-14-4. Likewise under a statutory precursor of section 3-14-4,²⁸ a contract providing for compensation of a city engineer at a percentage cost of certain street improvements was held invalid.²⁹

*Pawchak v. Long*³⁰ held that an office equipment company was not prevented from contracting with the city only because it was deemed an independent contractor and not a municipal officer. However, the court explained the meaning of a "municipal officer" under section 3-14-4. "Article 3 of the Cities and Villages Act wherein the disputed statute is found provides that the term municipal officer refers to elected or appointed officials whose duties are continuing and not limited to a single transaction. The statute does not purport to apply to an independent contractor."³¹ Therefore it is clear that all

26. *People v. Adduci*, 412 Ill. 621, 627, 108 N.E.2d 1, 4 (1952) (citations omitted).

27. 41 Ill. 2d 387, 43 N.E.2d 831 (1969).

28. CAHILL'S ILL. STAT. ch. 24, § 80.

29. *Koons v. Richardson*, 227 Ill. App. 477 (1923). In *Koons*, a city engineer was found to be a city officer within the meaning of the statute. Municipal officers include: president of village board, *Baumrucker v. Brink*, 373 Ill. 82, 25 N.E.2d 51 (1939); clerk of probate court, *Cook County v. Sennott*, 136 Ill. 314, 26 N.E. 491 (1891); clerk of municipal court, *People v. Gill*, 30 Ill. App. 2d 32, 173 N.E.2d 568 (1961); members of board of election commissioners, *People v. Board of Comr's of Cook County*, 260 Ill. 345, 103 N.E. 282 (1913); county jury commissioners, *Barnett v. Cook County*, 320 Ill. 227, 150 N.E. 672 (1926); municipal judges, *People ex rel. Lyle v. City of Chicago*, 360 Ill. 25, 195 N.E. 451 (1935). See also note 16 *supra*.

30. 91 Ill. App. 2d 218, 234 N.E.2d 85 (1968).

31. *Id.* at 220, 234 N.E.2d at 86.

Note that ILL. REV. STAT. ch. 38, § 2-18 (1973) provides:

"Public officer" means a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions.

elected or appointed municipal officers in Illinois are within the purview of chapter 24, section 3-14-4.

Chapter 102, Section 3

Chapter 102, section 3 expressly prohibits all Illinois public officials from holding any interest in contracts in which they may be called upon to act or vote, irrespective of whether state or municipal treasury funds are used to procure the contract. The court in *People v. Sperry*³² makes it clear that the statute is violated even if the state or the municipality is not deprived of economic benefit:

If the contract is one that the statutes declare to be void under the law, we must declare it void, even though it may further appear that the contract was as good a contract in behalf of the city as it could have obtained—that is, that the consideration for the work performed was as low as could have been obtained. If we attach any significance to the words used by the statute, 'directly or indirectly interested in the contract,' we think the conclusion cannot be escaped that the officers of the city, who are also employees of the contractor, must be considered as indirectly interested in the contract without regard to the fact that they derived no direct benefits from the contract itself. They would be more than human if they could make the same fair and impartial contract with the contractor, as they could with another party with whom they had no relation by way of employment or otherwise.³³

Furthermore, it is irrelevant whether an interested officer takes part in the letting of the contract or votes thereon.³⁴ In *Peabody v. Sanitary District*,³⁵ the treasurer and financial adviser of the sanitary district was also an employee of a company under contract with the city. The court propounded definitions of official and ministerial action in order to deal with the official's defense that he was a ministerial officer who took no active part in the contract. "Official action is judicial where it is the result of judgment or discretion. It is ministerial when it is absolute, certain and imperative, involving merely the execution of a set task, and when the law which imposes it prescribes and defines the time, manner, and occasion of its performance with such certainty that nothing remains for judgment or discretion."³⁶ Despite Schmidt's, the financial adviser's, testimony that he had no knowledge of the proscribed contract and that he was not even in a position to vote on the contract, the court invalidated the contract

32. 314 Ill. 205, 145 N.E. 344 (1924).

33. *Id.* at 209, 145 N.E. at 345-46.

34. *Peabody v. Sanitary District of Chicago*, 330 Ill. 250, 161 N.E. 519 (1928).

35. *Id.*

36. *Id.* at 257, 161 N.E. at 522.

under chapter 102, section 3. The *Peabody* court elucidated the relevant portion of the statute which prohibits the interested party from being in a position where he "may be called upon to act or vote."³⁷

While his testimony is to the effect that he (public official) had nothing to do with making or letting the contract to the ballast company, this is quite beside the point. If his duties were such that he could or might have been called upon to take any action in the matter of making a contract, that fact disqualified him from having any interest in the contract, either directly or indirectly, and such a contract was void.³⁸

While the evidence showed that the board of trustees did not seek the interested officer's financial advice in the contract, it was his duty to give that advice had the board sought it. "The question is, not what Schmidt (interested officer) did, but what he might be called upon to do, which determines the application of the statute."³⁹ Therefore, the court struck down the contract notwithstanding that Schmidt's company was the lowest bidder. Furthermore, since Schmidt was the financial adviser of the sanitary district, and required to make such report as the trustees directed, he was not entitled to the defense of being a purely ministerial officer even though he took no affirmative action in the contract with the city.

Neither favorable treatment nor affirmative participation is necessary to proscribe municipal officers from being interested in contracts with the city.⁴⁰ Nor must the municipal officer vote or be required to vote on the contract so long as he may be called upon to "act" on it.⁴¹ In *Kruse v. Streamwood Utilities Corporation*,⁴² city trustees, who were employees or officials of an engineering firm, unanimously voted to award a utility company a thirty-year license. Since the engineering company was under direct contract with the utilities company, the utilities contract was voided. However, prerequisite to any contract denial was proof of the engineering company's pecuniary interest in the contract.⁴³ Since the engineering firm received \$80 per lot from the

37. ILL. REV. STAT. ch. 102, § 3 (1973).

38. *Peabody v. Sanitary District of Chicago*, 330 Ill. 250, 258-59, 161 N.E. 519, 522-523 (1928).

39. *Id.* at 259, 161 N.E. at 523.

40. *Id.*

41. *Town of City of Peoria v. Rauskolb*, 333 Ill. App. 411, 78 N.E.2d 123 (1948); *Peabody v. Sanitary District of Chicago*, 330 Ill. 250, 161 N.E. 519 (1928).

42. 34 Ill. App. 2d 100, 180 N.E.2d 731 (1962).

43. *Panozzo v. City of Rockford*, 306 Ill. App. 443, 28 N.E.2d 748 (1940). The conflicting interest must be certain, definable and pecuniary or proprietary. *Panozzo v. City of Rockford*, *id.* See *Furlong v. South Park Com'rs*, 340 Ill. 363, 172 N.E. 757 (1930), wherein the park commissioners' allocation of a building to a not-for-profit corporation of which they were ex officio trustees was held not to violate section 3 as no pecuniary interest existed.

city for services rendered in the project, sufficient economic interest could be attributed to the city trustees to void the contract. The court in *Kruse* voided the contract solely on the basis of chapter 102, section 3.

It is obvious that the courts in all of the aforementioned cases invalidating municipal contracts under chapter 102, section 3, have determined that a conflict of interest existed between certain municipal officers and the city in derogation of the statute.

Official Misconduct, Chapter 38, Section 33-3

The official misconduct statute⁴⁴ and its predecessors have been implemented by local prosecutors for a wide range of offenses.⁴⁵ It is significant that the statute by definition⁴⁶ permits proof of another substantive offense.⁴⁷ It would seem that section 33-3, with its attendant penal sanction, could be a forceful tool in curbing substantive

44. § 33-3. Official Misconduct

A public officer or employee commits misconduct when, in his official capacity, he commits any of the following acts:

(a) Intentionally or recklessly fails to perform any mandatory duty as required by law; or

(b) Knowingly performs an act which he knows he is forbidden by law to perform; or

(c) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

A public officer or employee convicted of violating any provision of this Section forfeits his office or employment. In addition, he commits a Class 4 felony.

Amended by P.A. 77-2638, § 1, eff. Jan. 1, 1973.

45. Police bribery: *People v. Fleming*, 50 Ill. 2d 141, 277 N.E.2d 872 (1971), *People v. Gralewski*, 270 N.E.2d 566 (1971), *People v. Smith*, 57 Ill. App. 2d 74, 206 N.E.2d 463 (1965); Police extortion: *People v. Begley*, 270 Ill. App. 197 (1933); Perjury: *People v. McGreal*, 4 Ill. App. 3d 312, 278 N.E.2d 504 (1971); Omission of duty: *People v. Campbell*, 3 Ill. App. 3d 984, 279 N.E.2d 123 (1972) (Sanitary district trustees failure to award contract to lowest bidder), *People v. Gill*, 30 Ill. App. 2d 332, 173 N.E.2d 568 (1961) (Municipal court clerk's failure to report intoxicated driving convictions to Secretary of State), *People v. Reiner*, 6 Ill. 2d 337, 129 N.E.2d 159 (1955) (Police magistrate's failure to report intoxicated driving convictions to Secretary of State); Misfeasance: *People v. Haycraft*, 3 Ill. App. 3d 974, 278 N.E.2d 877 (1972) (township collector's misappropriation of funds); *People v. Crosson*, 30 Ill. App. 2d 57, 173 N.E.2d 552 (1961) (Court referee's discharge of a defendant without examining complaint); *People v. Blameuser*, 321 Ill. App. 307, 52 N.E.2d 818 (1944) (Village president encouraging horse betting); *People v. Hughey*, 382 Ill. 136, 47 N.E.2d 77 (1943) (Misappropriation of city funds); *People v. Gerold*, 265 Ill. 448, 107 N.E. 165 (1915) (Misappropriation of city funds).

46. Subparagraphs a, b, c and d of section 33-3 all require the omission or performance of an act forbidden by law.

47. See note 45 *supra* for bribery, extortion and perjury cases—all separate substantive offenses. For example, police bribery can be separately prosecuted under ILL. REV. STAT. ch. 38, § 33-1 (1973), and police extortion can be separately prosecuted under ILL. REV. STAT. ch. 38, § 16-1(c) (1973).

offenses of conflict of interest.⁴⁸ Unfortunately, this tool has been overlooked by law enforcement authorities.

However, the special difficulty in proving criminal intent under section 33-3 may justifiably cause apprehension. A recent Illinois Appellate Court reversed a public official's conviction for illegally disbursing attorney's fees and for entering into contracts without submission to the lowest bidder.⁴⁹ The court held in *People v. Campbell*⁵⁰ that knowledge that the performed act was in violation of the law was a requisite element of section 33-3.⁵¹ *Campbell* thus negates the principle that every person is presumed to know the law, and requires an allegation and proof of special knowledge on the part of those charged under section 33-3.⁵²

It may be concluded that if prosecutors can prove a defendant's "special knowledge," the accused may be indicted on counts of official misconduct and conflict of interest. If special knowledge or specific intent cannot be shown, prosecutors may resort to an indictment solely grounded upon the general intent conflict of interest statutes.⁵³

STATE CRIMINAL APPLICATION OF CONFLICT OF INTEREST STATUTES

As was previously mentioned,⁵⁴ there are no reported criminal conflict of interest convictions in Illinois. Therefore, a review of the criminal conflict law in three geographically disparate states can only assist in a determination of Illinois policy.⁵⁵

New Jersey

Over sixty years ago, a public official's conviction was affirmed for violation of a statute analogous to Illinois' chapter 102, section 3.

48. ILL. REV. STAT. ch. 102, § 3 (1973); ILL. REV. STAT. ch. 24, § 3-14-4 (1973).

49. *People v. Campbell*, 3 Ill. App. 3d 984, 279 N.E.2d 123 (1972).

50. *Id.*

51. ILL. REV. STAT. ch. 38, § 4-3(c) (1973) provides:

Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

Chapter 38, section 33-3 clearly defines knowledge as an element of the offense.

52. In *Campbell*, conviction was not affirmed since the defendant mistakenly believed he was empowered to enter into emergency contracts without submission to the lowest bidder. See *People v. Hughey*, 382 Ill. 136, 47 N.E.2d 77 (1943) which held that palpable omission of duty requires intentional substantial failure to perform duties imposed by law, and not mere failure through mistake.

53. The intent requirement of chapter 102, sections 3 and 4 and chapter 24, sections 3-14-4 and 3-14-5 will be discussed in the following subheading entitled, *State Criminal Application of Conflict of Interest Statutes*.

54. See note 4 *supra*.

55. Three states—New Jersey, Tennessee and North Dakota—were randomly selected to illustrate the criminal application of conflict of interest statutes. It is beyond the scope of this article to review the entire national spectrum.

In *State v. Kuehnle*,⁵⁶ a board member of the city water commission, Kuehnle, was a stockholder in a company under contract with the water commission. The court held that a defendant's corrupt intent was a requisite element to an interested officer's selfish and pecuniary concern in the contract.⁵⁷ However, corrupt intent could be imputed from a number of factors including financial interest, favorable treatment, and concealment.⁵⁸ The court continued that even the ownership of only one share of stock could imply criminal liability so long as corrupt intent was present.⁵⁹ It was noted that an official's failure to vote on the interested contract was immaterial since even an adverse vote could be a sham to conceal interest.⁶⁰

The controlling case in New Jersey today, *State v. Lambertson*,⁶¹ interpreted *Kuehnle* as holding that the state need only prove criminal intent or *mens rea* and not specific intent,⁶² for a criminal violation of the conflict of interest statutes.⁶³ The *Lambertson* court explained that the criminal intent to voluntarily do the wrongful act is all that is required where the statute does not mandate specific intent.⁶⁴ New Jersey law does not require a showing that the defendant was conscious that his acts were unlawful. The court articulated:

The ordained inquiry is whether the act condemned was committed with full knowledge of the facts, in a conscious and purposeful manner, without legal justification or excuse. It must not be the product of inadvertence or negligence or any state of mind other than a free and untrammelled will. This is the definition of criminal intent embodied in the words willfully and maliciously, as used in this statute. The accused must intend to act in the way proscribed by the statute, *but it is immaterial that he does not know or believe his conduct violates the law.*

*Even positive belief that the act is lawful should not exempt the doer from criminal responsibility. Consciousness of unlawfulness is not essential.*⁶⁵

56. 85 N.J.L. 220, 88 A.1085 (1913).

57. *Id.* at 226, 88 A. at 1087.

58. *Id.* at 228-229, 88 A. at 1089.

59. *Id.* at 226, 88 A. at 1088.

60. *Id.* at 229, 88 A. at 1089.

61. 110 N.J. Super. 137, 264 A.2d 729 (1970).

62. *Id.* at 142, 264 A.2d at 731.

63. Defendant Lambertson was convicted under N.J.S.A. 2A:135-8(c) (1969) which provides:

Any member of a board of chosen freeholders or of the governing body of a municipality, or of a board of education in any school district, who:

c. Is directly or indirectly interested in furnishing any good chattels, supplies or property to or for the county, municipality or school district, the agreement or contract for which is made or the expense or consideration of which is paid by the board or governing body of which such member is a part. . . .
Is guilty of a misdemeanor.

64. 110 N.J. Super. 137, 142-143, 264 A.2d 729, 732 (1970).

65. *Id.* at 143, 264 A.2d at 732 (emphasis added).

Therefore, a voluntary performance of an act prohibited by the New Jersey conflict of interest statute satisfies the criminal intent requirement.⁶⁶ Ignorance of the law or good faith is no defense to this non-specific intent crime. Although the state offered no direct evidence of Lambertson's knowledge of the contract, an inference of defendant's knowledge and intent was drawn from the extent of his financial interest in the company.⁶⁷ It seems that Illinois cases which have voided contracts under conflict of interest based upon pecuniary interest could also be implemented to show criminal intent.⁶⁸

Tennessee

In Tennessee, contracts procured by public officials under a conflict of interest are void, and an officer may be removed from office under their ouster law, if willful misconduct is shown.⁶⁹ In *State v. Miller*⁷⁰ a complaint was brought against the chairman of the county board of education for renting his own busses for the board in violation of state conflict of interest statutes.⁷¹ Although this was a *quo warranto* suit brought by taxpayers without the intervention of the district attorney, the court pointed out that sections 12-401 and 402 are enforceable by indictment under the common law.⁷²

Miller is significant for its distinction of the civil remedy of voiding the contract as opposed to the criminal penalty of ouster from office. In quoting from *State ex rel. Citizens of Lawrenceburg v. Perkinson*,⁷³ the court declared:

By a uniform line of decisions, contracts in violations of the statute have been declared void. This is true though the official

66. N.J.S.A. 2A:135-8(c) (1969), the current New Jersey statute requiring the use of governing body funds in an interested contract, is analogous to ILL. REV. STAT. ch. 24, § 3-14-4 (1973).

67. *State v. Lambertson*, 110 N.J. Super. 137, 147, 264 A.2d 729, 734 (1970).

68. See *Kruse v. Streamwood Utilities Corporation*, 34 Ill. App. 2d 100, 180 N.E.2d 731 (1962). See also *Panozzo v. City of Rockford*, 306 Ill. App. 443, 28 N.E.2d 748 (1940).

69. *State v. Miller*, 202 Tenn. 498, 304 S.W.2d 654 (1957).

70. *Id.*

71. T.C.A. §§ 12-401, 12-402 provide:

12-401. Personal interest of officers prohibited.

It shall not be lawful for any officer, committeeman, director or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend, any work or any contract in which any municipal corporation, county, or the state, shall or may be interested in any such contract.

12-402. Penalty for unlawful interest.

Should any person, acting as such officer, committeeman, director, or other person referred to in § 12-401, be or become directly or indirectly interested in any such contract, he shall forfeit all pay and compensation therefor. Such officer shall be dismissed from such office he then occupies, and be ineligible for the same or a similar position for ten (10) years.

72. *State v. Miller*, 202 Tenn. 498, 505-06, 304 S.W.2d 654, 656 (1957).

73. 159 Tenn. 442, 445, 19 S.W.2d 254, 255 (1929).

contracted in good faith. But where the act is invoked as basis for ouster under chapter 11, Acts of 1915, a distinction must be drawn between the acts done in good faith but unenforceable because the statute makes them so, and acts of willful misconduct, as where a public officer corruptly and fraudulently abuses his powers in making the contract. In the first instance, the contract could not be enforced. In the latter, the officer may be indicted for official corruption and removed from office under the Ouster Law. The remedies are concurrent.⁷⁴

Thus, a public official's corrupt or criminal intent to violate the conflict of interest statutes will subject him to criminal indictment as well as negation of the illegal contract.

North Dakota

The Supreme Court of North Dakota has held that a criminal conflict of interest statute⁷⁵ may apply to a public official who, in his official capacity, contracts with a corporation of which he is a substantial stockholder.⁷⁶ The prohibited interest must be personal and not merely held in a representative capacity such as a trustee.⁷⁷ The court in *State v. Robinson*⁷⁸ noted that where the dual corporate capacity of officer and stockholder surfaces, the prohibited interest is more apparent.⁷⁹ However, criminal intent would be an element additional to economic or proprietary interest when criminal sanctions are imposed.⁸⁰

The current North Dakota statute⁸¹ was the basis of a township board member's conviction for holding a beneficial interest in a highway construction contract procured with the township.⁸² In response to the official's defense of good faith, the court in *State v. Pyle*⁸³ said: "[H]e [defendant] testified that he did not know or was

74. *State v. Miller*, 202 Tenn. 498, 510, 304 S.W.2d 654, 659 (1957) (citations omitted).

75. Compiled Laws N.D. § 9829 (1913) provides:

Officer's fraud. Every public officer, being authorized to sell or lease any property or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

76. *State v. Robinson*, 71 N.D. 463, 2 N.W.2d 183 (1942).

77. *Id.* at 471, 2 N.W.2d at 189.

78. *Id.*

79. *Id.* at 468, 2 N.W.2d at 187.

80. *Id.* at 472, 2 N.W.2d at 189.

81. N.D.R.C. § 12-10-06 (1973) provides:

12-10-06. Personal interest in contract by public officer—Punishment—Exception—Every public officer authorized to sell or lease any property, or make any contract in his official capacity, who contrary to law voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a misdemeanor.

82. *State v. Pyle*, 71 N.W.2d 342 (1955).

83. *Id.*

not aware of the fact that there was a law such as section 12-1006. However it is a well-established rule that ignorance of the law excuses no one and it follows therefore that defendant's ignorance of the existence of Section 12-1006 was not a defense to the offense with which he was charged."⁸⁴ *State v. Pyle*⁸⁵ also stands for the proposition that the legislature in exercising its police powers may prohibit a specific act under criminal penalty. "The doing of the prohibited act constitutes the crime, and the purity of the motive by which the act is prompted, and the knowledge or ignorance of its criminal character, are immaterial on the issue of guilt."⁸⁶ Consequently, the criminal intent or *mens rea* to do the proscribed act is sufficient for culpability, whereas specific intent to violate the statute is immaterial.

CONCLUSIONS FROM THE THREE-STATE REVIEW

The foregoing three-state analysis illustrates that criminal prosecution under chapter 102, section 3 and chapter 24, section 3-14-4 is indeed feasible in Illinois. Proof of criminal intent is surmountable under these general intent statutes.⁸⁷ It is certainly a constitutional principle that due process requires intent to be an essential element of a crime.⁸⁸ However, the only criminal intent necessary for proof is that which is required by Illinois Statute.⁸⁹

A defendant's intent to commit a conflict of interest offense can be imputed from a variety of factors including financial (e.g. stockholder) or proprietary (e.g. corporate officer) interest.⁹⁰ The presence of these determinants illustrative of criminal intent would negate the defenses of lack of knowledge or that the public official was purely a ministerial officer in the letting of the prohibited contract.⁹¹ If a

84. *Id.* at 346.

85. *Id.*

86. *Id.* at 346.

87. Since Illinois conflict of interest statutes do not specifically require knowledge on the part of an accused that his conduct constitutes a statutory offense, chapter 102, section 3 and chapter 24, section 3-14-4 are not specific intent offenses. See ILL. REV. STAT. ch. 38, § 4-3(c) (1973), set out in note 51 *supra*.

88. *Landry v. Daley*, 280 F. Supp. 968, (N.D. Ia.), *dismissed*, 393 U.S. 220 (1968).

89. ILL. REV. STAT. ch. 38, § 4-1 (1973):

A material element of every offense is voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing.

ILL. REV. STAT. ch. 38, § 4-4 (1973):

A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.

90. See *State v. Lambertson*, 110 N.J. Super. 137, 264 A.2d 729 (1970); *State v. Robinson*, 71 N.D. 463, 2 N.W.2d 183 (1942); *State v. Kuehnle*, 85 N.J.L. 220, 88 A. 1085 (1913).

91. See *Peabody v. Sanitary District*, 330 Ill. 250, 161 N.E. 519 (1928).

municipal officer intends to hold a beneficial interest in a contract for which municipal treasury funds are used or for which he may be required to act or vote, he should be held criminally responsible.⁹²

FEDERAL INTERVENTION

Conflict of interest by Illinois public officials has not gone unnoticed by federal law enforcement authorities. Chicago Alderman Thomas Keane has recently been convicted for engaging in a mail fraud scheme to buy and sell tax delinquent properties that were subject to vote before the city council of which Keane was a voting member.⁹³ The federal indictment incorporated the Illinois conflict of interest statutes.⁹⁴ The presiding federal district court judge, Honorable Bernard M. Decker, ruled that the Illinois statutes served to define the standard of conduct expected of the defendant, and bore upon the defendant's knowledge and intent to defraud.⁹⁵ Judicial notice of state statutes in a federal prosecution may be an effective prosecutorial device in defining a public official's duty.⁹⁶

Furthermore, in the Seventh Circuit's affirmation of conviction of the former Clerk of Cook County in *United States v. Barrett*,⁹⁷ illustrated the significance of Illinois statutory policy in regard to its public officials. In *Barrett*, the county clerk received secret insurance brokerage commissions on voting machines while he procured the insurance for such machines on behalf of the county. Thus, a public official may be convicted of mail fraud in depriving citizens of his loyal and faithful services by committing a conflict of interest.⁹⁸

92. ILL. REV. STAT. ch. 24, §§ 3-14-4, 3-14-5 (1973); ILL. REV. STAT. ch. 102, §§ 3, 4 (1973).

93. *United States v. Keane*, No. 74 CR 359 (N.D. Ill. 1974), *appeal pending*, No. 74-1979 (7th Cir. 1974). Conviction was obtained for conspiracy, 18 U.S.C. § 371 (1970), and mail fraud, 18 U.S.C. § 1341 (1970).

94. ILL. REV. STAT. ch 24, § 3-14-4 (1973); ILL. REV. STAT. ch. 102, § 3 (1973).

95. *United States v. Keane*, No. 74 CR 359 (N.D. Ill., Aug. 15, 1974).

96. *See, e.g., United States v. Lyon*, 397 F.2d 505, 513 (7th Cir.), *cert. denied*, 393 U.S. 846 (1968); *United States v. McCormick*, 309 F.2d 367, 371 (7th Cir. 1962), *cert. denied*, 372 U.S. 911 (1963); *Lemp Brewing Co. v. Ems Brewing Co.*, 164 F.2d 290, 293 (7th Cir. 1947) *cert. denied*, 333 U.S. 863 (1948); *Moore v. United States*, 2 F.2d 839, 842 (7th Cir.), *cert. denied*, 267 U.S. 599 (1924).

97. *United States v. Barrett*, 505 F.2d 1091, 1104 (7th Cir. 1974). In *Barrett*, the court considered ILL. REV. STAT. ch. 38, § 33-3 (1973) in determining the public official's duty.

98. *United States v. Keane*, No. 74 CR 359 (N.D. Ill.), *appeal pending*, No. 74-1979 (7th Cir. 1974); *see also United States v. Barrett*, 505 F.2d 1091 (7th Cir. 1974).

It is well established that a scheme to defraud a public entity and its citizens of the honest and faithful services of a public official is within the reach of the mail fraud statute. *United States v. Isaacs*, 493 F.2d 1124 (7th Cir. 1974), *cert. denied*, 94 S. Ct. 3184 (1974); *United States v.*

THE ILLINOIS GOVERNMENTAL ETHICS ACT

The Illinois Governmental Ethics Act⁹⁹ has evidenced the state legislature's concern for an honest and proper administration of government. Although the preliminary portions of the act are aimed at prevention of conflict of interest by state legislators,¹⁰⁰ the most recent enactment requiring disclosure of economic interests appears to be more effective.¹⁰¹ Article 4A¹⁰² applies economic disclosure regulations to local government officials¹⁰³ as well as all members in the legislative, executive, and judicial branches of government.¹⁰⁴ These regulations are emphatic¹⁰⁵ and enforceable under criminal penalties.¹⁰⁶ The Illinois Supreme Court, in upholding the constitutionality of the Governmental Ethics Act held that the act which required different types of economic interest disclosure from state officials, as distinguished from local officials, does not unconstitutionally discriminate between persons of the same legislative class.¹⁰⁷

CONCLUSION

It is apparent that local prosecutors have the penal statutes available to effectively deter conflict of interest official corruption in Illinois.¹⁰⁸ In this post-"Watergate" era the time has come for public

States, 488 F.2d 761 (8th Cir. 1973); *Shushan v. United States*, 117 F.2d 110 (5th Cir.), *cert. denied*, 313 U.S. 574 (1941).

In *United States v. George*, 477 F.2d 508 (7th Cir. 1973), a buyer for Zenith Radio Corporation was indicted under 18 U.S.C. § 1341 for scheming to defraud Zenith of his loyal and faithful services by receiving kickbacks from a cabinet supplier. Zenith's conflict of interest policy was admitted into evidence as bearing on the knowledge and intent of the defendants. This reasoning was specifically applied in *United States v. Keane* to admit ILL. REV. STAT. ch. 102, § 3 (1973) and ILL. REV. STAT. ch. 24, § 3-14-4 (1973) as bearing on Keane's intent to defraud. See *United States v. Keane*, *supra*.

99. ILL. REV. STAT. ch. 127, §§ 601-101 *et seq.* (1973).

100. ILL. REV. STAT. ch. 127, §§ 601-101 to 603-304 (1973).

101. ILL. REV. STAT. ch. 127, §§ 604A-101 through 604A-107 (1973) (enacted January 24, 1972).

102. *Id.*

103. ILL. REV. STAT. ch. 127, § 604A-101 (g), (h), (i) (1973).

104. ILL. REV. STAT. ch. 127, § 604A-101 (a), (b), (e) (1973).

105. ILL. REV. STAT. ch. 127 § 604A-102 (b) (1) (1973) provides that public officials shall disclose land interests in excess of \$5,000 or dividends in excess of \$1,200. Section 604A-102 (b) (2) requires disclosure of any business entity where income is received in excess of \$1,200.

State officials must file the form statement of economic interests with the Secretary of State as provided under section 604A-103. Local officials must file a form statement of economic interests with the county clerk as provided under section 604A-104.

106. ILL. REV. STAT. ch. 127, § 604A-107 (1973) provides that any person required to file a statement of economic interest who wilfully files a false or incomplete statement is guilty of a Class A misdemeanor.

107. *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409 (1972), *dismissed*, 412 U.S. 925 (1973).

108. ILL. REV. STAT. ch. 102, §§ 3, 4 (1973); ILL. REV. STAT. ch. 24, §§ 3-14-4, 3-14-5 (1973); ILL. REV. STAT. ch. 24, § 4-8-6 (1973); ILL. REV. STAT. ch. 38, § 33-3 (1973); ILL. REV. STAT. ch. 127, § 604A-107 (1973).

officials to be strictly accountable to the citizens they serve. County state's attorneys should take cognizance that their office is the primary safeguard the people retain against thwarting local corruption in public office.

For whatever reasons, there is a total void of convictions in conflict of interest cases, and it may be that the inherent complexities attendant to conflict of interest crimes is the reason.¹⁰⁹ If the stagnation continues, federal prosecutors will be compelled to assume an even greater burden in convicting local officials for breach of the public trust.¹¹⁰

109. It is notable that in *People v. Keane*, No. 73-1409 (Cir. Ct. Cook County, 1973), a criminal indictment brought by the Cook County State's Attorney charging violations of chapter 102, section 3 and chapter 38, section 33-3 was dismissed. This indictment charged two aldermen with voting on city contracts to deposit city funds in Jefferson State Bank of which the aldermen were stockholders. The trial judge entered a directed verdict for the defendants in this bench trial. Note that this indictment 73-1409 entailed a wholly different conflict of interest as that for which a federal conviction was obtained in *United States v. Keane*, No. 74 CR 359 (N.D. Ill.), *appeal pending*, No. 74-1979 (7th Cir. 1974).

110. See note 9 *supra*.

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