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Stone Harbor v. Div. of Coastal Resources  
Cite as 4 *N.J.A.R.* 101

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**BOROUGH OF STONE HARBOR,**  
Petitioner,  
v.  
**DIVISION OF COASTAL RESOURCES,**  
**DEPARTMENT OF ENVIRONMENTAL**  
**PROTECTION; C.A.P.E.; and**  
**AMERICAN LITTORAL SOCIETY,**  
Respondents.

Decided November 5, 1980

**Decision on Motion and Order**

**SYNOPSIS**

The respondent in this matter moved to bar counsel for petitioner because of an alleged conflict of interest. At issue was the application of *N.J.S.A.* 52:13D-16 which places restriction on the practice of law by members of the State Legislature.

The administrative law judge noted that *N.J.S.A.* 52:13-D-16(b) prohibits members of the Legislature and their partners and employees from representing, appearing for, negotiating on behalf of, or agreeing to represent any person other than the State in connection with any cause, proceeding, application, or other matters pending before a State agency. While *N.J.S.A.* 52:13D-16(c) provides an exception to that prohibition when the legislator is representing a municipality, that exception does not apply when the State is an adverse party.

While observing that there are certain types of hearings before administrative agencies where the State is not an adverse party the administrative law judge concluded that in this matter, the State is clearly a party adverse to the Borough of Stone Harbor.

Accordingly, the administrative law judge held that petitioner's counsel was barred from appearing in the matter.

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**William M. Balliette, Jr., Esq.,** for petitioner (Cafiero and Ba-liette, attorneys)

**John Van Dalen, Esq.,** Deputy Attorney General for respondent, Division of Coastal Resources (John Degnan, Esq., Attorney General, attorney)

**Gail G. Abrams, Esq.,** for C.A.P.E. and the American Littoral Society

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**SMITH, ALJ:**

At a prehearing conference the attorney for C.A.P.E. and the American Littoral Society moved to bar counsel for petitioner from appearing in this action because of an alleged conflict of interest. Mr. Balliette is the partner of State Senator James Cafiero. At issue is the application of *N.J.S.A.* 52:13D-16, which places certain restrictions on the practice of law by members of the State Legislature and their partners, officers and employees. I offered to adjourn the matter while the parties seek an opinion from the Joint Legislative Committee on Ethical Standards in accordance with the authority granted that body by *N.J.S.A.* 52:13D-22. Mr. Balliette expressed his desire that I rule on the matter in order to expedite the hearing process. He volunteered to abide by my decision.

*N.J.A.C.* 1:13.7(a) provides:

All attorneys, pro se parties, or others *permitted by law* . . . shall be permitted to appear in a contested case . . . (Emphasis supplied).

*N.J.A.C.* 1:1-3.9 provides:

A judge shall have full power, jurisdiction, and authority to . . . issue all orders necessary for the proper and expeditious handling of contested cases assigned for disposition.

Those rules, when read together with all of the Uniform Administrative Procedure Rules of Practice, authorize an administrative law judge to rule on the propriety of the appearance of counsel in a contested case. Such a determination must include a review of any applicable statute or rule.

*N.J.S.A.* 52:13D-16(b) prohibits members of the Legislature and their partners and employees from representing, appearing for, negotiating on behalf of, or agreeing to represent any person other than the State in connection with any cause, proceeding, application, or other matter pending before any State agency. *N.J.S.A.* 52:13D-16(c) provides an exception to that prohibition when the legislator is representing a municipality, as in the case before me. However, this exception does not apply when the State is an adverse party. Therefore, the narrow determination here is whether or not the State is an adverse party. If it is not, then Senator Cafiero's firm can represent the Borough of Stone Harbor.

This contested case arose because the Director of the Division of Coastal Resources in the Department of Environmental Protection imposed certain conditions on a permit for which the Borough of

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Stone Harbor applied. Those conditions are contained in a document identified as opinion Number 60, July 1979 and entitled "Final Decision of Plans Submitted by the Borough of Stone Harbor to Satisfy the Conditions of CAFRA permit CA75-7-125." The first sentence of the opinion states: "This document represents the final decision of this Division. . . ." The Borough of Stone Harbor felt aggrieved by the imposition of those conditions and requested a hearing. The matter was then certified as a contested case pursuant to *N.J.S.A.* 52:14B-10 and *N.J.S.A.* 52:14F-1 *et seq.*

Mr. Balliette argues that this is not a contested case because no final decision has been made by the agency head, *i.e.* the Commissioner of the Department of Environmental Protection. That decision must come after the initial decision of the administrative law judge. However, the Division of Coastal Resources has rendered what it calls a final decision. The Department of Environmental Protection has certified this matter as a contested case. Both parties will be taking opposite positions during the preparation of a record before the administrative law judge. The Commissioner of the Department of Environmental Protection has the right to take no action following the initial decision of the administrative law judge. In that event, the initial decision is automatically deemed adopted as the final decision of the agency head after the expiration of 45 days. *N.J.S.A.* 52:14B-10(c). All of these qualities taken together render the Borough of Stone Harbor and the Department of Environmental Protection (a state agency) adverse to each other's interest in this proceeding.

There are certain types of hearings before administrative agencies where the State is not adverse, for example: a hearing before the Civil Service Commission between a municipality and a municipal employee; a hearing before the State Board of Education between a local board of education and a teacher; a hearing before the Director of the Division of Alcoholic Beverage Control between a municipality and a licensee. These are only some examples. In all of them, the agency merely provides a neutral forum for the resolution of a dispute between other parties and the State is not adverse to the interest of any party. In the case before me, the Department of Environmental Protection, through its subsidiary Division of Coastal Resources, is clearly a party adverse to the Borough of Stone Harbor.

This interpretation is consistent with the Legislative findings embodied in *N.J.S.A.* 52:13D-12(a):

In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect

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and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

Describing those findings, the Supreme Court has observed:

When representation of public bodies is involved, the appearance of impropriety assumes an added dimension. Position of public trust call for even more circumspect conduct. . . ." *In re Opinion No. 415*, 318-324 (1979)

For the foregoing reasons, I hold that Senator Cafiero's firm is proscribed by the provisions of *N.J.S.A.* 52:13D-16 from representing the Borough of Stone Harbor in this case.

When I reached the foregoing determination, my secretary notified all counsel by telephone in order to expedite the entry of a new attorney into the case. After learning of my decision, Mr. Balliette requested that I delay the formal entry of this Order until the November meeting of the Joint Legislative Committee on Ethical Standards. Ms. Abrams has objected to that procedure. Although it was my original desire to await a determination by that Committee, I proceeded to decide the issue myself at the urging of Mr. Balliette. For reasons of procedural fairness, I will not delay the issuance of this Order. I consider this Order to be final, pursuant to the authority of *N.J.A.C.* 1:1-9.7(e) concerning Interim Orders dealing primarily with procedural matters.