

**SUPERIOR COURT OF NEW JERSEY**  
**SOMERSET, HUNTERDON, AND WARREN COUNTIES**  
**VICINAGE 13**

GRAHAM T. ROSS  
ASSIGNMENT JUDGE

EUGENE L. FARKAS  
TRIAL COURT ADMINISTRATOR

SUE REGAN  
ASSISTANT TRIAL COURT ADMINISTRATOR



ROBERT C. POLLOCK  
PRESIDING JUDGE MUNICIPAL COURTS

PATRICIA M. SHEETO  
MUNICIPAL DIVISION MANAGER

MUNICIPAL DIVISION  
20 N. Bridge Street - P.O. Box 3000  
Somerville, New Jersey 08876-1262  
908-231-7606 Fax: 908-231-7632

**MEMORANDUM**

**TO:** Vicinage 13 Municipal Court Judges

**FROM:** Robert C. Pollock, P.J.M.C. *Robert Pollock*

**DATE:** January 8, 2003

**RE:** Preemption of Municipal Ordinances

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On January 6, 2003 Superior Court Appellate Division decided State of New Jersey (Township of West Orange) vs. Carl A. Paserchia reversing a conviction of a municipal ordinance banning disorderly conduct that had been initially entered by the West Orange Municipal Court and affirmed by the Superior Court Law Division.

While the opinion has not yet been approved for publication, it is enclosed for your guidance in adjudicating the issue of preemption which is being raised with increasing frequency in our municipal courts pursuant to N.J.S.A. 2C:1-5d.

You will observe that generally, to survive preemption, the municipal ordinance must address a subject matter that is of local concern and the fact that an ordinance addressing the same subject matter as the State Statute contains a different standard of culpability does not save it from preemption.

/jlm  
Attachment

cc: Hon. Graham T. Ross, A.J.S.C.  
Eugene L. Farkas, T.C.A.  
Patricia M. Sheeto, M.D.M.  
Joan C. Cordell, Admin. Spec.



State of New Jersey  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE

JOHN J. FARMER, JR.  
Attorney General

PO Box 085  
TRENTON, NJ 08625-0085  
TELEPHONE (609) 984-6500

KATHRYN FLICKER  
Director

MEMORANDUM

**TO:** Municipal Prosecutor Supervisors (Attached Distribution List)

**FROM:** Deputy Attorney General Stephen Monsen  
Prosecutors Supervision & Coordination Bureau

**DATE:** January 8, 2003

**SUBJECT:** State (Twp. W. Orange) v. Paserchia, \_\_\_ *N.J. Super.* \_\_\_ (App. Div. 2003)  
decided 1-6-2003

On January 6, 2003, this office informed you about the above Appellate Division decision and indicated it was an unreported decision (See, *R.* 1:36-3). We have subsequently learned that this opinion was approved for publication. A copy of the reported decision is attached.

In this case, the Appellate Division reversed the defendant's conviction for a violation of a "disorderly conduct" municipal ordinance, on the grounds that a State statute, *N.J.S.A.* 2C:33-2 preempted the ordinance. As we originally noted, this decision is significant in that it underscores the view expressed in the November 18, 1998 Attorney General Directive pertaining to "Plea Agreements in Municipal Courts." Copy attached. Accordingly, please review and distribute this opinion, and the Attorney General's Directive it to the Municipal Prosecutors in your county. Prosecutors should be reminded that disposition of offenses as municipal ordinance violations is permissible only in limited circumstances. State (Twp. W. Orange) v. Paserchia, \_\_\_ *N.J. Super.* at \_\_\_ - \_\_\_, s.o. at pp. 5-8, citing, State v. Crawley, 90 *N.J.* 241 (1982); State v. Felder, 329 *N.J. Super.* 471 (App. Div. 2000); State v. Meyer, 212 *N.J. Super.* 1 (App. Div. 1986); Dolecky v. Boro. Riverton, 223 *N.J. Super.* 354 (App. Div. 1987).

Attachments: Reported Opinion, AG Directive Nov. 18, 1998.

- c. DAG Jessica S. Oppenheim, Chief Prosecutors Supervision & Coordination Bureau  
DAG Tom Fiskens, Dep. Chief, Prosecutors Supervision & Coordination Bureau  
DAG Marie Pirog, Prosecutors Supervision & Coordination Bureau  
DAG Christine Hoffman, Prosecutors Supervision & Coordination Bureau



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JOHN J. FARMER, JR.  
Attorney General

PO Box 085  
TRENTON, NJ 08625-0085  
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KATHRYN FLICKER  
Director

MEMORANDUM

**TO:** Municipal Prosecutor Supervisors (Attached Distribution List)

**FROM:** Deputy Attorney General Stephen Monson,  
Prosecutors Supervision & Coordination Bureau 

**DATE:** January 6, 2003

**SUBJECT:** State (Twp. W. Orange) v. Paserchia, Dkt. A-2652-01, decided 1-6-2003

Attached is an unreported decision (See, R. 1:36-3), issued this date, by the Appellate Division, State (Twp. W. Orange) v. Paserchia, Dkt. A-2652-01. In this case, the Appellate Division reversed the defendant's conviction for a violation of a "disorderly conduct" municipal ordinance, on the grounds that a State statute, *N.J.S.A. 2C:33-2* preempted the ordinance.

This decision is significant in that it underscores the view expressed in the November 18, 1998 Attorney General Directive pertaining to "Plea Agreements in Municipal Courts." Copy attached. Accordingly, please review and distribute this opinion, and the Attorney General's Directive it to the Municipal Prosecutors in your county. Please remind prosecutors that disposition of offenses as municipal ordinance violations is permissible only in limited circumstances. State (Twp. W. Orange) v. Paserchia, s.o. at pp. 5-8, citing, State v. Crawley, 90 *N.J.* 241 (1982); State v. Felder, 329 *N.J. Super.* 471 (App. Div. 2000); State v. Meyer, 212 *N.J. Super.* 1 (App. Div. 1986); Dolecky v. Boro. Riverton, 223 *N.J. Super.* 354 (App. Div. 1987).

Attachments: Slip Opinion, AG Directive Nov. 18, 1998.

- c. DAG Jessica S. Oppenheim, Chief Prosecutors Supervision & Coordination Bureau
- DAG Tom Fiskens, Dep. Chief, Prosecutors Supervision & Coordination Bureau
- DAG Marie Pirog, Prosecutors Supervision & Coordination Bureau
- DAG Christine Hoffman, Prosecutors Supervision & Coordination Bureau
- DAG Neil Magnus, Division of Law
- DAG Tina Frost, OAG, Office State Police Affairs



| <u>County</u> | <u>Supervisor</u>                               | <u>County Prosecutor</u>   |
|---------------|-------------------------------------------------|----------------------------|
| Atlantic      | Murray Talasnik, FAP<br>Jack Lipari, AP         | Jeffrey S. Blitz           |
| Bergen        | Annmarie Cozzi, AP                              | John L. Molinelli          |
| Burlington    | Raymond Milavsky, FAP                           | Robert D. Bernardi         |
| Camden        | Joshua Ottenberg, AP                            | Vincent P. Sarubbi         |
| Cape May      | John Molitor, AP                                | J. David Meyer (Acting)    |
| Cumberland    | Linda Lawhun, FAP                               | Arthur J. Marchand         |
| Essex         | Hilary Brunell, EAP                             | Donald Campolo (Acting)    |
| Gloucester    | Michael Curwin, AP                              | Sean F. Dalton             |
| Hudson        | Kathleen Coughlin AP                            | Edward J. De Fazio         |
| Hunterdon     | Katharine Errickson, AP                         | Steven Lember FAP (Acting) |
| Mercer        | John Jingoli, AP                                | Daniel G. Giaquinto        |
| Middlesex     | Nicolas Sewitch, AP                             | Bruce J. Kaplan            |
| Monmouth      | Mark Stalford, AP                               | John Kaye                  |
| Morris        | Brain Kenny, AP                                 | Michael Rubbinaccio        |
| Ocean         | Thomas Cannavo, AP                              | Thomas Kelaher             |
| Passaic       | Dante Mongiardo, AP                             | James F. Avigliano         |
| Salem         | Michael Ostrowski, AP                           | John E. Bergh              |
| Somerset      | Joseph Rocchietti, AP                           | Wayne J. Forrest           |
| Sussex        | Robin Lawrie, AP                                | Dolores M. Blackburn       |
| Union         | Kenneth Siegel, AP                              | Theodore J. Romankow       |
| Warren        | LeeAnn Cunningham, AP                           | John G. Laky               |
| Div. Law      | Neil Magnus, DAG                                |                            |
| OAG           | Tina Frost, DAG, Office of State Police Affairs |                            |



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY  
OFFICE OF THE ATTORNEY GENERAL  
CN 080

TRENTON, NJ 08625-0080  
(609) 292-4925

November 18, 1998

CHRISTINE TODD WHITMAN  
Governor

PETER VERNIERO  
Attorney General

TO ALL MUNICIPAL COURT PROSECUTORS

Re: Plea Agreements in Municipal Courts

Dear Municipal Prosecutor:

I have been advised that there is an increasingly widespread practice developing in municipal court where municipal prosecutors are downgrading criminal or traffic offenses from State statutes to municipal ordinance violations where State law has pre-empted the field. For reasons expressed below, this practice should be discontinued immediately.

According to information my office has received regarding this downgrade plea agreement procedure, defendants, in some cases, are assessed fines greater than permitted by State statute. An incentive for some defendants to accept this plea agreement with its increased fines is the fact that the defendants are informed that if they accept the plea offer they will avoid the imposition of other statutory penalties or administrative actions, such as motor vehicle points, *N.J.A.C. 13:19-10 et seq.*, and administrative license supervision, *N.J.A.C. 13:19-11 et seq.*

In most cases, State law has pre-empted the field, thus precluding the municipality from enacting an ordinance that provides for a sanction proscribing certain conduct. Our courts have defined the circumstances when State law pre-empts the authority of a municipality to enact such a municipal ordinance. The essential factors are:

1. Does the ordinance conflict with the state law, either because of conflicting policies, or operation effect, that is, does the ordinance forbid what the Legislature has permitted?
2. Was the state law intended expressly or impliedly to be exclusive in the field?

3. Does the subject matter reflect a need for uniformity?
4. Is the State scheme so pervasive or comprehensive that it precludes coexistence of municipal regulation?
5. Does the ordinance stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the Legislature?

*Overlook Terrace Management Corp. v. West New York Rent Control Bd.*, 71 N.J. 451, 460-462 (1976). See also *State v. Crawley*, 90 N.J. 241, 248, 250 (1982); *Summer v. Teaneck Twp.*, 53 N.J. 548, 554-55 (1969); *State v. Ulesky*, 54 N.J. 26, 29 (1969); *Kennedy v. Newark*, 29 N.J. 178 (1959).

If a municipal prosecutor has concerns whether State law has pre-empted a particular area of the law, the municipal prosecutor should discuss the matter with the County Prosecutor's Office or with the Prosecutors and Police Bureau within the Division of Criminal Justice. The municipal prosecutor, as an officer of the court, cannot simply ignore this obligation. The failure of the municipal prosecutor to take appropriate action in these matters may result in disciplinary action and possible sanction by the State Supreme Court. See *In the Matter of Norton and Kress*, 128 N.J. 520 (1992); *In the Matter of Segal*, 140 N.J. 468 (1992).

In addition, there must be a nexus between the original charge and the new charge. The factual basis for the plea must establish that the elements of the offense have been committed by the defendant. Pursuant to R. 7:6-2, a factual basis for a plea must be placed on the record. It is the responsibility of the prosecutor to establish this factual basis on the record. In addition, the prosecutor must state on the record the reasons for the downgraded plea agreement. *State v. Taylor*, 80 N.J. 353, 361-62, 403 A.2d 889 (1979); *State v. Sainz*, 107 N.J. 283, 293 (1987).

The responsibility of offering a plea agreement rests exclusively with the prosecutor. This is not a function of a court. In no case should a blanket plea offer be distributed or mailed to all defendants by either the court or the municipal prosecutor. It is important for the prosecutor to keep in mind that a "prosecutor is not an ordinary advocate. Rather, the prosecutor has an obligation to defendants, the State and the public to see that justice is done ...." [Comment, *Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey*, Appendix to Part VII court Rules. Guideline].

Pursuant to the provisions of the Criminal Justice Act of 1970, *N.J.S.A.* 52:17B-112, and the provisions of *N.J.S.A.* 2B:12-27, I direct that each of you adhere to the provisions of this letter. Thank you for your continued cooperation.

Sincerely yours,



Peter Verniero  
Attorney General

cc: Paul H. Zoubek, Director  
Debra L. Stone, Deputy Director  
Hon. James Ciancia, Director, Administrative Office of the Courts  
Dennis L. Bliss, Assistant Director  
Municipal Court Services, Administrative Office of the Courts  
All County Prosecutors  
DAG Greta Gooden-Brown, Chief  
Prosecutors and Police Bureau  
William John Kearns, Jr., General Counsel  
N.J. State League of Municipalities