



Cumberland County Prosecutor's Office

Intra-Office Correspondence

TO: ALL MUNICIPAL PROSECUTORS CUMBERLAND COUNTY
CHIEFS OF POLICE
STATION COMMANDERS – PORT NORRIS STATE POLICE
BRIDGETON STATE POLICE

cc: Carl W. Cavagnaro, Trial Chief
John W. Grunow, Team Leader-Special Litigation Unit

FROM: Harold B. Shapiro, First Assistant Prosecutor *HBS*

SUBJECT: Municipal Court Downgrades

DATE: April 24, 2015

VIA: Email

At the direction of Prosecutor Jennifer Webb-McRae, attached please find copy of August 16, 2010 Memorandum previously sent by the County Prosecutor to each of the Municipal Prosecutors in Cumberland County, attached to which is the November 18, 1998 Directive from the Attorney General to Municipal Court Prosecutors relating to "Plea Agreements in Municipal Courts". Please note that the filing of charges initially and/or the resolution of same by way of plea bargaining must proceed in accordance with the Attorney General Directive such that any ordinances which have been preempted, superseded, repealed or codified under a different number are not utilized to effect the resolution or disposition of any case.

If there are any questions with regard to the above and the attached, please feel free to contact this office, in particular Trial Chief Carl W. Cavagnaro, Unit Leader for Special Litigation, John W. Grunow or the undersigned.

HBS:hlm
Encls.



**OFFICE OF THE COUNTY PROSECUTOR
JENNIFER WEBB-MCRAE
CUMBERLAND COUNTY PROSECUTOR**

**Linda L. Lawhun
Executive Assistant Prosecutor**

**Harold B. Shapiro
First Assistant Prosecutor**

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43 Fayette Street
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TO: ALL MUNICIPAL PROSECUTORS CUMBERLAND COUNTY
FROM: JENNIFER WEBB-MCRAE CUMBERLAND COUNTY PROSECUTOR
RE: PREEMPTION
DATE: AUGUST 16, 2010

JWM

It has come to the attention of this office that some municipal prosecutor's may be engaging in improperly downgrading certain criminal or traffic offenses to municipal ordinance violations. I refer you to the attached directive from former New Jersey Attorney General Peter Verniero which addresses this practice. Our research has determined that this directive is still in effect. I ask that all Cumberland County Municipal Prosecutors make every effort to obey this directive and avoid improper downgrades. Kindly direct any questions or concerns you may have to Assistant County Prosecutor John Grunow at the telephone number listed above. His direct extension is 3381.



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 WITMAN
Governor

PETER VERNEAO
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-empted 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); *Sumner 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).

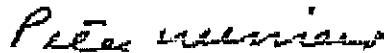
If a municipal prosecutor has concerns whether State law has pre-empted a particular area of the law, the municipal prosecutor should discuss the matter with the County Prosecutor's Office or with the Prosecutors and Police Bureau within the Division of Criminal Justice. The municipal prosecutor, as 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 Scgal*, 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