



**STATE OF NEW JERSEY
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April 24, 2008

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since March 27, 2008

Other Cases

The Appellate Division has reversed a decision of the Merit System Board that had rejected an ALJ's recommendation to terminate an employee. The MSB also awarded the employee attorney's fees. A municipal surveyor had collected \$5 from a customer for a tax map. The daily deposits had already been made so the next day, the surveyor gave the five \$1 bills and a receipt to Deborah Payton, who worked in the Tax Assessor's Office. She put the bills and receipt in her back pocket on her way to the ladies' room. The next day, the Tax Assessor showed Payton a copy of the receipt. Payton said that she had forgotten about the money and asked permission to go home to get it. The Assessor said no and suspended Payton. Payton's union representative told her to hold onto the receipt and money until the departmental hearing. At the hearing, Payton returned the receipt and five different \$1 bills. She was removed and appealed to the Merit System Board. The ALJ discredited Payton because the serial numbers on the bills returned did not match the serial numbers on the receipt and sustained the charge of conduct unbecoming a public employee.

The MSB adopted the ALJ's finding of fact but concluded that those facts did not support the charge of conduct unbecoming a public employee or the severe sanction of removal. The MSB found that "the record [did] not establish that [Payton] intentionally took the \$5." The MSB specifically expressed that it was "troubled that the appointing authority failed to allow the

appellant to return the money the next day, especially in light of the fact that it had no policy as to what do with money received after the daily deposits had been made.

The Appellate Division panel reversed holding that the ALJ's findings were entitled to deference. It remanded the matter to the MSB for redetermination of the propriety of the removal penalty in light of both neglect of duty and conduct unbecoming a public employee.

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