



State of New Jersey

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JOHN J. HOFFMAN
Acting Attorney General

JEFFREY S. JACOBSON
Director

June 11, 2015

VIA E-MAIL AND HAND DELIVERY

Honorable John A. Sweeney, A.J.S.C. (ret.), Chairman
and the Council Members
State of New Jersey Council on Local Mandates
135 West Hanover St, 4th Fl.
P.O. Box 627
Trenton, NJ 08625-0627

Re: In the Matter of a Complaint Filed by Deptford
Township, COLM-0003-15

Dear Chairman and Council Members:

I am enclosing for filing on behalf of Respondent, State of New Jersey, an original and two copies each of the following documents:

1. Notice of Motion to Dismiss Complaint in Lieu of an Answer;
2. Letter Brief in Support of Respondent's Motion to Dismiss Complaint; and
3. Certification of Service.

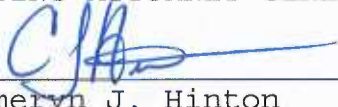
One copy of each of these documents has also been filed with the Council by electronic mailing. Thank you for your attention to this filing.



Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____


Camelyn J. Hinton
Deputy Attorney General

cc: Douglas M. Long, Esq.
Long Marmero & Associates, LLP
44 Euclid St.
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_____)) COUNCIL ON LOCAL MANDATES
)) DOCKET NO. COLM-0003-15
))
IN THE MATTER OF A COMPLAINT)
FILED BY DEPTFORD TOWNSHIP)) NOTICE OF MOTION
)) TO DISMISS COMPLAINT
)) IN LIEU OF AN ANSWER
_____))

To: Honorable John A. Sweeney, A.J.S.C.(ret.), Chairman
and the Council Members
State of New Jersey Council on Local Mandates
135 West Hanover St, 4th Fl.
P.O. Box 627
Trenton, NJ 08625-0627

Attorney for Claimant
Douglas M. Long, Esq.
Long Marmero & Associates, LLP
44 Euclid St.
Woodbury, NJ 08096

PLEASE TAKE NOTICE that John J. Hoffman, Acting Attorney
General of New Jersey, by Cameryn J. Hinton, Deputy Attorney
General, attorney for Respondent, State of New Jersey, will apply
to the Council on Local Mandates on a date and time to be

determined by the Council for an order dismissing the complaint by Deptford Township.

Respondent, State of New Jersey will rely on the accompanying letter in support of the motion to dismiss the complaint.

Respectfully Submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondent
State of New Jersey

By: 

Cameryn J. Hinton
Deputy Attorney General

Dated: June 11, 2015



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State of New Jersey Council on Local Mandates
135 West Hanover St, 4th Fl.
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Trenton, NJ 08625-0627

Re: In the Matter of a Complaint Filed by Deptford
Township, COLM-0003-15

Dear Chairman and Council Members:

Please accept this letter in lieu of a more formal brief in support of the Respondent, State of New Jersey's ("State") Motion to Dismiss the complaint filed by Claimant, Deptford Township ("Deptford") and in opposition of Deptford's request for injunctive relief. The Council should dismiss the complaint because it fails to allege the requisite criteria of an unfunded mandate as defined by the Local Mandates Act, N.J.S.A. 52:13H-1 et seq.



PLEADING SUMMARY

The statute in issue, N.J.S.A. 40A:14-118.1, mandates that every new or used municipal police vehicle purchased, leased or otherwise acquired on or after March 1, 2015, that is primarily used for traffic stops, shall be equipped with a mobile video recording system. Deptford contends that the statute is an unfunded mandate, causing the municipality to incur additional direct expenditures for implementation. However, Deptford has not demonstrated that the law imposes a mandate applicable to the vehicles it "acquired" in this case.

Moreover, enactment of this statute was accompanied by an amendment to N.J.S.A. 39:4-50, which provides funding for the municipalities' costs of acquiring video recording systems through an increase in the surcharge issued to persons convicted of driving while intoxicated ("DWI"). Therefore this mandate, in effect, is not unfunded Deptford, in fact, admits that the mandate is funded, but contends that the funding is inadequate. The Council however is not empowered to determine the sufficiency of the funding, and Deptford's claim is, therefore, beyond the Council's purview.

Accordingly, the Council should grant the State's motion to dismiss the complaint and deny Deptford's request for injunctive relief.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

N.J.S.A. 40A:14-118.1 requires "every new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the effective date [March 1, 2015] which is primarily used for traffic stops shall be equipped with a mobile video recording system." The statute defines a "mobile video recording system" as "a device or system installed or used in a police vehicle or worn or otherwise used by an officer that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action." Ibid. L. 2014, c. 54 also amends N.J.S.A. 39:4-50 to increase the surcharge imposed on persons convicted of DWI from \$100.00 to \$125.00. The amendment calls for the additional \$25.00 to be paid to the municipality issuing the summons for the purpose of covering the costs of mobile video recording systems pursuant to N.J.S.A. 40A:14-118.1.

On May 4, 2015, Deptford Township, through its Mayor, Paul Medany, filed a complaint with the Council on Local Mandates alleging that N.J.S.A. 40A:14-118.1 is a "statute, rule, or regulation" that "does not authorize resources, other than the property tax, to offset the additional direct expenditures required for its implementation." Deptford accordingly asks the Council to determine that the statute is an unfunded mandate. (Compl. § II,

¶3). Deptford further seeks injunctive relief in the form of a stay in the implementation of the statute's requirements until this Council determines the statute has expired or until adequate funding is authorized. (Compl. § II, ¶5). As will be demonstrated herein, Deptford's contentions are baseless and thus, Deptford's complaint should be dismissed and prayer for injunctive relief denied.

Deptford alleges in its complaint that it acquired six new patrol vehicles on or around the effective date of the statute. (Compl. at § II, ¶3). No date of acquisition was plead; the complaint, however, then hypothesizes that "[i]f N.J.S.A. 40A:14-118.1 is deemed applicable to Deptford Township's acquisition...Deptford [] would be liable for the direct expenditures necessary to implement the statute because the New Jersey State Legislature failed to appropriate funds when it passed N.J.S.A. 40A:14-118.1." (Compl. at § II, ¶3). Deptford predicts that purchasing vehicle mounted cameras would cost an initial \$49,483.07 or alternatively \$63,483.00 for body-worn cameras for individual officers. (Compl. at § II, ¶3). Deptford concludes that the revenue from the statute's funding is "grossly inadequate" in covering its estimated implementation costs. (Compl. § II, ¶3). Deptford claims that because the increased surcharges statutorily authorized to fund the mandate would not produce the full amount Deptford would need to bring its six new vehicles into compliance,

Deptford would incur additional direct expenditures. (Compl. at § II, ¶3).

Deptford also claims that it would be required to incur other recurring costs associated with compliance, including software licensing, limited warranties, ancillary equipment, and data storage and maintenance. (Compl. at § II, ¶4). Again, premising its claims on the possibility that the six new vehicles are covered by the new mandate, Deptford alleges that "[it] would make significant initial payments without receiving funds appropriated by the State for the purpose of implementing the statute." (Compl. at § II, ¶4).

Deptford requests injunctive relief in the form of a stay in the implementation of the statute's requirements on the basis that "[i]f it is determined that N.J.S.A. 40A:14-118.1 is applicable to Deptford", it would incur approximately \$49,483.07 in costs to incorporate vehicle mounted video recording systems in each of the vehicles. (Compl. at § II, ¶5). Alternatively, body-worn cameras would cost Deptford \$63,483.00 in initial expenditures to outfit sixty officers. (Compl. at § II, ¶5).

On May 13, 2015, the Council requested that the State submit an answer to Deptford's complaint. On May 26, 2015, the Council held a conference call with the parties and issued a case management order directing the State to submit its responsive pleading by June 11, 2015. The claimant's response is due June 25,

2015, followed by the State's reply on July 9, 2015. Thereupon, the State moves for dismissal of this complaint and denial of injunctive relief.

POINT I

DEPTFORD HAS FAILED TO MEET THE REQUISITE CRITERIA OF ESTABLISHING THAT N.J.S.A. 40A:14-118.1 IS AN IMPERMISSABLE UNFUNDED MANDATE AND THEREFORE, ITS COMPLAINT MUST BE DIMISSED.

The Council has recognized that under appropriate circumstances, it may grant a motion for dismissal of a complaint under the standards set forth in the New Jersey Court Rules. See In re Highland Park Bd. of Educ., (August 5, 1999). It is axiomatic that dismissal of a complaint is mandated where the allegations made therein "are palpably insufficient to support a claim upon which relief can be granted." Rieder v. State Dep't of Trans., 221 N.J. Super. 547, 552 (App. Div. 1987). In the present case, accepting all of the allegations of the complaint as true, they fail to support a claim that N.J.S.A. 40A:14-118.1 is an unfunded mandate, as a matter of law.¹

To make out a claim of unconstitutionality under Article VIII, section II, paragraph 5 of the New Jersey Constitution ("Amendment") and the Local Mandates Act, N.J.S.A. 52:13H-1 to -22

¹ Respondent accepts the complaints' allegations as true only for purposes of this motion. If the motion is not granted, respondent reserves the right to present additional defenses and submit additional evidence in support of these defenses.

("LMA"), Claimants must demonstrate that: (1) N.J.S.A. 40A:14-118.1 imposes a "mandate" on a unit of local government; (2) additional direct expenditures are required for the implementation of N.J.S.A. 40A:14-118.1; and (3) N.J.S.A. 40A:14-118.1 fails to "authorize resources, other than the property tax, to offset the additional direct expenditures." In re Complaints filed by the Monmouth-Ocean Education Services Comm'n, ("Monmouth-Ocean") (August 20, 2004) at 6.

Deptford cannot satisfy all three prongs necessary to present an unfunded mandate before the Council. Specifically, Deptford's complaint fails to state a viable claim because it cannot meet the additional direct expenditures requirement since Deptford has not plead that the six new vehicles are subject to the mandate. The statute mandates in its broadest terms that only vehicles "purchased, leased or otherwise acquired", i.e., obtained through a surplus program, through donation or via a grant opportunity, on or after March 1, 2015 shall be equipped with a mobile video recording system. Effectively, the statute does not apply to any vehicles "purchased, leased or otherwise acquired" prior to the effective date.² Here, Deptford fails to allege with

² While Deptford's complaint ambiguously states that the patrol vehicles were "acquired on or around" the effective date of the statute, Deptford's counsel confirmed on the conference call of May 26, 2015 that the vehicles were purchased before March 1, 2015, but were delivered after that date.

any specificity the date the new vehicles were purchased, leased or otherwise acquired, and accordingly, cannot allege that the mandate applies or has caused the municipality to incur any additional expenses.

Finally, Deptford's complaint fails to allege that N.J.S.A. 40A:14-118.1 does not authorize resources, aside from property tax, to offset the additional direct expenditures required for implementation of the law. In fact, Deptford admits that funding is authorized through N.J.S.A. 39:4-50. (Compl. § II, ¶3; Letter dated April 22, 2015). However, Deptford attempts to plead that the statutory funding is inadequate. Deptford alleges that if the six new vehicles it purchased are subject to the mandate, the authorized funding would not cover the costs Deptford would incur to comply. Nonetheless, it is clear that the implementation costs of N.J.S.A. 40A:14-118.1 are funded through the resources authorized in the conviction surcharge amendment of N.J.S.A. 39:4-50. Therefore, Deptford's complaint can only be recognized as a request seeking the Council's determination as to the adequacy of the funding. N.J.S.A. 52:13H-12(a), however, definitively restricts the Council from determining the adequacy of any statute's funding. See also Assembly Appropriations Committee Statement to P.L. 199, c. 24 (March 25, 1996) ("The council has no authority to determine whether funding of any statute, rule or regulation is inadequate."). Therefore, the complaint must be

dismissed.

POINT II

INJUNCTIVE RELIEF IS NOT WARRANTED BECAUSE DEPTFORD HAS NOT SHOWN FINANCIAL HARDSHIP RESULTING FROM COMPLIANCE, OR LIKELIHOOD THAT N.J.S.A. 40A:14-118.1 CONSTITUTES AN IMPERMISSABLE, UNFUNDED STATE MANDATE.

Deptford's request for injunctive relief must be denied. By failing to allege any additional direct expense and admitting that the mandate is in fact funded, Deptford has no basis for injunctive relief. First, the likelihood of the Council deeming the statute an impermissible unfunded mandate is remote because the statute at issue is statutorily funded and the Council has no authority to determine the adequacy of that funding. Furthermore, as discussed above, Deptford fails to allege that its six new vehicles are in fact subject to the statute, and thereby, cannot demonstrate any financial hardship resulting from its implementation of the statute.

The Council on Local Mandates is authorized pursuant to N.J.S.A. 52:13H-16 "to issue a preliminary ruling enjoining enforcement of a statute or a rule or regulation pending the Council's consideration of whether the statute or the rule or regulation constitutes an unfunded mandate. . . ." As a general proposition, the grant of interim relief such as an injunction is an extraordinary equitable remedy which may be imposed at the

discretion of the court or administrative agency. Zoning Bd. v. Service Elec. Cable Television, 198 N.J. Super. 370, 379 (App. Div. 1985). The decision whether to impose a stay must be made on an individualized basis after careful consideration of questions of justice, equity and morality presented by the circumstances of each particular case. Ibid. Where the right to injunctive relief is not clear as a matter of law, preliminary injunction should not issue Ibid. Undoubtedly, Deptford is not entitled to injunctive relief simply as a matter of course. Nor, as set forth below, has Deptford presented a sufficient basis for granting an injunction in this case.

Deptford's allegations in their entirety rely on sheer speculation that the mandate applies to the six new vehicles. Thus, in addition to Deptford's failure to present a viable claim because it cannot show additional direct expenses incurred by implementing the mandate, Deptford cannot claim it will endure any, let alone significant, financial hardship through implementation. Furthermore, to the extent Deptford seeks injunctive relief in anticipation of adequate statutory funding, the Council would not be authorized to issue an injunction since it does not have authority to determine the adequacy of funding.

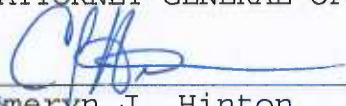
CONCLUSION

For the reasons set forth above, Deptford's Complaint must be dismissed in its entirety as the complaint fails to meet the pleading requirements and the challenged statute is not an unfunded mandate. Additionally, Deptford's application for injunctive relief must be denied as it has failed to meet any of the requirements for granting such relief.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Cameryn J. Hinton
Deputy Attorney General

DATED: June 11, 2015


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_____)	COUNCIL ON LOCAL MANDATES
)	DOCKET NO. COLM-0003-15
)	
IN THE MATTER OF A COMPLAINT)	
FILED BY DEPTFORD TOWNSHIP)	CERTIFICATION OF SERVICE
)	
)	
_____)	

I hereby certify that the enclosed Notice of Motion, supporting Letter, and Certification of Service were sent for filing on this day via hand delivery and electronic mail to the Honorable John A. Sweeney, A.J.S.C. (ret.), Chairman and the Council Members of the New Jersey Council on Local Mandates at 135 West Hanover St., 4th Floor, P.O. Box 627, Trenton, NJ 08625-0627., and filings-clmand@treas.state.nj.us and jsweeneylaw@comcast.net and served via hand delivery and electronic mail on the following individual:

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By: 
Cameryn J. Hinton
Deputy Attorney General

Dated: June 11, 2015