



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 112  
TRENTON, NJ 08625-0112

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

JOHN J. HOFFMAN  
*Acting Attorney General*

MICHELLE L. MILLER  
*Acting Director*

July 17, 2015

VIA E-MAIL AND HAND DELIVERY

Honorable John A. Sweeney, A.J.S.C. (ret.), Chairman  
and Council Members  
State of New Jersey Council on Local Mandates  
135 West Hanover St, 4<sup>th</sup> 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:

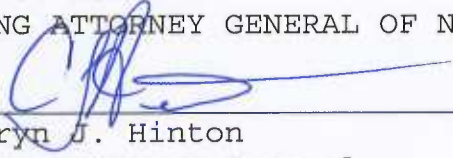
I am enclosing for filing on behalf of Respondent, State of New Jersey, an original and two copies each of the State's Reply Letter in Support of its Motion to Dismiss Deptford's Complaint and certification of service.

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: \_\_\_\_\_

  
Cameryn J. Hinton  
Deputy Attorney General

cc: VIA OVERNIGHT MAIL



July 17, 2015

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Douglas M. Long, Esq. c/o Brian Shotts, Esq.,  
Long Marmero & Associates, LLP  
Edward Purcell, Esq., Associate Counsel for the New Jersey  
State League of Municipalities





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

Dear Chairman and Council Members:

Please accept this Reply Letter in Support of the State's Motion to Dismiss the Complaint filed by Deptford Township before the Council of Local Mandates ("the Council").

It is undisputed that the Council must "proceed with great caution when considering requests for summary disposition" given the finality of the Council's decisions. In the Matter of a Complaint filed by Ocean Township and Frankford Township, August 2, 2002 at 5 (hereinafter "Ocean-Frankford"). However, Deptford's complaint must be dismissed as it is irreparably deficient and no disputed material fact stands in the way of the Council so finding.

Claimant and Amicus Curiae, The New Jersey State League of Municipalities (the "League"), erroneously argue that the Deptford complaint has satisfied all three prongs required to establish an unconstitutional unfunded mandate in regard to N.J.S.A. 40A:14-118.1. Simply put, the complaint cannot survive without evidence that Deptford is subject to the statute's mandate. Hence, Deptford's opposition first seeks to narrowly define the statute's conditional clause "or otherwise acquired" to preserve the complaint. Deptford essentially admits that the direct reading of the statute mandating patrol vehicles "purchased, [or] leased" after the March 1, 2015 effective date would impair Deptford's claim because its vehicles were purchased prior to the effective date. (DR3)<sup>1</sup>. Deptford seeks to preserve its claim by attaching its own factual circumstances to the plain interpretation of the statute. Deptford's complicated reading of "or otherwise acquired"- a term used as a catch-all provision to describe means of attaining possession or control of something through means *other than* those previously stated in a number of other effective statutes- is meritless. See e.g. P.L. 1995, c.145 ("For the purposes of this act, 'domestic companion animal' means any animal commonly referred to as a pet or one that has been bought, bred, raised *or otherwise acquired*, in accordance with local ordinances

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<sup>1</sup> "DR" shall refer to Deptford's Response.

and State and federal law, for the primary purpose of providing companionship to the owner, rather than for business or agricultural purposes." ) (emphasis added); N.J.S.A. 5:10-14.4 ("Notwithstanding the provisions of P.L. 1947, c.71, in the event that the convention hall or halls or convention center project, including the site of a convention hall or convention center project to be constructed, located in any municipality which levies a luxury tax pursuant to such law, shall be purchased, leased or otherwise acquired by the New Jersey Sports and Exposition Authority . . . .") (emphasis added). N.J.S.A. 40A:14-118.1 embodies this catch-all provision as a clear and obvious means of ensuring that additional means of acquiring a patrol vehicle, besides through a purchase or lease, induce the municipalities' compliance with the mandate.

Deptford argues that the "or otherwise acquired" clause- which serves as one of the conditions of the statute's application- requires that "acquired" be strictly defined as attaining physical possession and control after having already satisfied the "purchased, [or] leased" conditions. (DR3). Deptford argues that no other interpretation is feasible without rendering the "or otherwise acquired" clause superfluous. Ibid. However, contrary to the "well-established principle of statutory construction that a statute must be read in its entirety and, if possible, full effect should be given to every word of statute", Deptford fails to

consider the full effect of the statutory language. Ocean-Frankford at 10 (citing Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969)).

Read comprehensively, the phrase "or otherwise acquired" is defined by Merriam-Webster dictionary as, "in a different way or manner" "to get as one's own". *Merriam-Webster Dictionary* available at <http://www.merriam-webster.com/dictionary/otherwise> and <http://www.merriam-webster.com/dictionary/acquired>, last accessed on July 14, 2015. This comprehensive definition simply does not support Deptford's interpretation that "acquired" merely defines the possession or control accomplished by the preceding conditions. Such an interpretation would render the conditional language "purchased, [or] leased" superfluous making physical possession and control the superseding and absolute condition. Therefore, the language of the statute disallows any interpretation that the mandate applies under any other condition apart from the municipality having purchased, or leased, or by *other* means attain the same level of possession or control of a patrol vehicle after March 1, 2015. Considering the plain language interpretation of the statute, Deptford's complaint must be dismissed for the fact that the first prong of establishing that the statute imposes a mandate on Deptford cannot be met.

Next, Deptford attempts to preserve its additional direct expenditure claim by arguing that even if the six new patrol

vehicles are not subject to the mandate, Deptford predicts its future costs of complying with the statute will not be completely offset by the authorized funding. Deptford has not shown any present additional direct expenditures to implement the statute and the amount of authorized statutory funding available for Deptford's use to implement the mandate at some point in the future is indeterminable. The only means of determining that Deptford has shown an additional direct expenditure requires the Council to exceed the parameters of its authority. Necessarily, in order for Deptford to satisfy the additional direct expenditures prong, Deptford must first have the Council find the legislature failed to authorize adequate funding.

Deptford and the League rely on the Council's decisions in In the Matter of Complaint Filed by the Mayors of Shiloh Borough et al., October 22, 2008 (hereinafter "Shiloh") and In the Matter of a Complaint Filed by Ocean Township and Frankford Township, August 2, 2002, (hereinafter "Ocean-Frankford") to support the contention that the Council's authority to determine the constitutionality of an unfunded mandate, necessarily allows it to find N.J.S.A. 40A:14-118.1 unfunded despite the statute's authorized funding. Essentially, Deptford is requesting the Council to determine the adequacy of the authorized statutory funding. Granting Deptford's request requires impermissible extension of the Council's authoritative parameters as outlined by

N.J.S.A. 52:13H-12(a). As the Council has previously stated "the obvious purpose of this legislative provision . . . is to prevent the Council from becoming involved in fiscal policymaking". Shiloh, at 11. The Council does not overwrite legislative fiscal findings or forecast complex schemes to detect remote possibilities that a municipality would incur additional direct expenditures implementing a statutorily funded mandate.

In Ocean-Frankford, the Council granted the State's Motion to Dismiss after finding the claimants failed to show an unfunded mandate existed since it was clear that the amended statute had authorized funding through fee collection at the discretion of the municipality. Ocean-Frankford, at 14. In further explanation the Council stated that the "[l]egislature had met its obligation to authorize a resource other than the property tax to fund the mandate." Deptford, however, relies on Ocean-Frankford to leverage the Council's position that the Council will not give "blind deference to the Legislature's method of funding the costs of a mandate, if that method is seriously flawed to the point of being illusory." Ocean-Frankford, at 12. Deptford argues that the authorized funding for N.J.S.A. 40A:14-118.1 is illusory and thus the Council may determine the adequacy of the statute's funding. Nevertheless, just as the Council found in Ocean-Frankford, it is apparent in the present case that the Legislature authorized funding and thus the Legislature has met its burden. Furthermore,



the amount authorized cannot be deemed illusory because the amount of funding available at a given time is indeterminable and the statute does not reveal a definitive disparity between the mandate's funding and costs- unlike the funding the Council determined inadequate in Shiloh.

Deptford attempts to further its argument that the Council may scrutinize the adequacy of authorized funding by comparing the funding schemes of Shiloh and N.J.S.A. 40A:14-118.1. However, not only are the facts surrounding these statutory mandates dissimilar, the Council's determination in Shiloh also did not bear solely on inadequacy of funding. Shiloh, at 12.

Shiloh raised issues with the conditional appropriation of funds for State police protection for rural municipalities which had previously been provided without conditions in the yearly Appropriations Act. Shiloh, at 5. Specifically, the Fiscal Year 2009 Appropriations Act implemented a condition requiring the municipalities to obtain some of the financial burden of utilizing the State Police. Ibid. The Council found that the statute itself defined the actual unfunded mandate imposed on the effected municipalities since the statute only authorized a portion of the funding the municipalities would need according to the State's past expenditures. Shiloh, at 12 ("There would be little substance in the constitutional 'State mandate/ State pay' directive if the legislature could avoid it by expressly electing to provide a

specified partial amount of funding by the local units"). Consequently, the Council was able to explain that finding the funding inadequate on its face did not violate N.J.S.A. 52:13H-12(a) because the Council was not "second-guessing legislative judgment about the adequacy of the legislative funding, but simply recognizing the explicit terms and the acknowledged consequences of the legislation." Shiloh, at 11.

In the instant matter, however, N.J.S.A. 40A:14-118.1 is a directive for an entirely novel program and is accompanied by authorized funding for the cost of implementation with no exceptions or definitive funding to cost disparities. The Council would indeed have to second-guess the legislative funding in order to determine that the mandate is unfunded as Deptford pleads. Unlike Shiloh, the plain language of the statute does not contemplate any additional direct costs to the municipalities. In fact, the costs to the municipalities are entirely unforeseeable. While financial forecasting could contemplate the amount a particular municipality may need to meet the obligations of the mandate, the Council would have to employ an expertise outside its statutory authority to find an unfunded mandate in regard to the current complaint.

Furthermore, Deptford's irreparably deficient complaint renders its request for injunctive relief entirely impermissible. Deptford has not shown it will incur additional direct expenditures

as a result of the mandate and consequently, will not suffer irreparable harm, nor be denied any legal right at the denial of injunctive relief. Moreover, Deptford admits that its new patrol vehicles were purchased prior to the statute's effective date and thus, there are no material facts in controversy. Accordingly, neither party faces imminent hardship at the denial of injunctive relief because Deptford has failed to claim being subject to the mandate at issue pursuant to N.J.S.A. 52:13H-1 et seq.

For the reasons set forth above, the State respectfully requests that its Motion to Dismiss Deptford's Complaint be granted and Deptford's application for injunctive relief be denied.

Respectfully submitted,

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

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Cameryn J. Hinton  
Deputy Attorney General

DATED: July 17, 2015

JOHN J. HOFFMAN  
Acting Attorney General of New Jersey  
Attorney for Respondent,  
Board of Review  
R.J. Hughes Justice Complex  
P.O. Box 112  
Trenton, New Jersey 08625  
Attorney for Respondent  
State of New Jersey

By: Cameryn J. Hinton  
Deputy Attorney General  
(609)292-6123  
Cameryn.Hinton@dol.lps.state.nj.us  
ID #067182013

COUNCIL ON LOCAL MANDATES  
DOCKET NO: COLM-0003-15

IN THE MATTER OF A )  
COMPLAINT BY DEPTFORD ) CERTIFICATION OF SERVICE  
TOWNSHIP )  
)  
)

JULIA NAJJAR, of full age, hereby certifies that:

1. I am a Legal Secretary with the Division of Law,  
Department of Law and Public Safety, State of New Jersey.

2. On July 17, 2015 at the direction of Cameryn J. Hinton,  
Deputy Attorney General, I sent an original and one copy of the  
Reply letter in connection with the above-mentioned matter via hand  
delivery 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 two copies of the Reply Letter overnight mail  
to :

Edward Purcell, Esq.  
League of Municipalities  
222 W. State Street  
Trenton, NJ 08608

Doug M. Long, Esq.  
Brian P. Shotts, Esq.  
44 Euclid Street  
Woodbury, NJ 08096

I certify that the foregoing statements made by me are true.  
I am aware that if any of the foregoing statements made by me are  
willfully false, I am subject to punishment.



JULIA NAJJAR

Dated: July 17, 2015