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**Via E-Mail and Hand Delivery**

Honorable John S. Sweeney, A.J.S.C. (ret), Chairman and the  
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 Township of  
Deptford, COLM-0003-15

Dear Chairman and Council Members,

Please accept this letter in lieu of a more formal brief  
on behalf of *amicus curie* the New Jersey State League of  
Municipalities (League). The law at issue, P.L. 2014, c. 54,  
is an unfunded mandate. We ask that the Council grant  
Deptford's request for injunctive relief. The League opposes  
the State's motion to dismiss this case.

**Preliminary Statement**

P.L. 2014, c. 54 is a law which requires that new  
municipal police cruisers be outfitted with "mobile video  
recording system[s]," it is a law enacted with the best  
intentions, but it is a law which violates our state's  
prohibition on unfunded mandates. The League urges the  
Council on Local Mandates (Council) to invalidate P.L. 2014,

c. 54 (chapter 54) because it is an unfunded mandate pursuant to the Article VIII, § II, ¶ 5 of the New Jersey Constitution and of N.J.S.A. 52:13H-1 et seq., the Local Mandates Act (LMA). In sum, the law is an unfunded mandate because it imposes costs on municipalities but doesn't provide a means to pay for them.

We ask that this Council grant Deptford's request for injunctive relief. Under well settled judicial principles, Deptford is entitled to such relief. Additionally, until this Council grants such relief, chapter 54 will continue to cause irreparable harm to municipalities because its cost will fall directly on their operating expenses. Therefore, injunctive relief is appropriate.

#### **Interests of Amicus**

The League represents all 565 municipalities in the State of New Jersey. Many of our municipalities operate their own police departments and, accordingly, must purchase police cruisers from time to time. Because, P.L. 2014, c. 54 would require these municipalities to outfit these cruisers with "mobile video recording system[s]" and expend resources in its implementation, their interests are at stake.

### **Procedural History**

On May 4, 2015 Deptford Township filed a mandate complaint with this Council. On June 11, 2015 the state filed a motion to dismiss Deptford's complaint.

### **Statement of Facts**

The League relies on the facts laid out in Deptford's complaint of May 4, 2015.<sup>1</sup>

### **Legal Argument**

By way of background, chapter 54 requires that, "every new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the effective date of P.L. 2014, c. 54 [March 1, 2015] which is primarily used for traffic stops shall be equipped with a mobile video recording system." N.J.S.A. 40A:14-118.1. The law goes on to define "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." Id.

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<sup>1</sup> Cited as "D.C."

**I. Chapter 54 is an Unfunded Mandate Pursuant to the New Jersey State Constitution and the Local Mandates Act**

Chapter 54 is an unfunded mandate pursuant to Article VIII, § II, ¶ 5 of the New Jersey Constitution (Amendment) and of N.J.S.A. 52:13H-1 et seq., the Local Mandates Act (LMA) because it mandates that municipalities expend resources to purchase and operate "mobile video recording system[s]" without providing an adequate funding source beyond the property tax.

The LMA provides, "... any provision of a law enacted on or after January 17, 1996... which is determined in accordance with the provisions of this act to be an unfunded mandate...because it does not authorize resources to offset the additional direct expenditures required for the implementation of the law, shall cease to be mandatory in its effect and shall expire." N.J.S.A. 52:13H-2. In order to demonstrate a claim of unconstitutionality under the Amendment and the LMA, the claimant must satisfy the following three prong test: i) that the statute, rule or regulation imposes a "mandate" on a unit of local government; ii) that additional direct expenditures are required for the implementation of the law or rule or regulation; and iii) that the statute, rule or regulation fails to authorize resources other than the property tax to

offset the additional direct expenditures. IMO Complaints Filed by the Monmouth-Ocean Education Services Commission et al. at 6 (08.20.04). Deptford's complaint meets each of these prongs as laid out below.

**i. Chapter 54 Imposes a Mandate on Municipalities**

The first prong requires that the statute impose a "mandate" on a unit of local government. Webster's dictionary defines "mandate" as, "[a] command, order, or injunction; a command from a superior court or official to an inferior one." Webster's Comprehensive Dictionary, American Internat'l Press (1985). Simply stated, "where there is choice, there is no mandate." IMO Complaint Filed by the Twp of Medford, at 12 (06.01.09). For example, in IMO Allamuchy Township Board of Education, this Council held that that the state's Anti-bullying Bill of Rights law was a mandate because it required that every Board of Education adopt new policies, establish programs and appoint specialists. at 4 (5.1.12). Put simply, a law that requires affirmative action by a municipality is a mandate.

This Council has also read "mandate" to include changes of longstanding policy which shift costs onto local government. For example, in IMO Complaints Filed by the Counties of Morris, Warren, Monmouth and Middlesex Counties,

this Council held that a change in the state Department of Transportation's policy, requiring counties and municipalities to pick up deer carcasses, was a mandate because, "[to read otherwise] would open a loophole that is inconsistent with the practical reality that the State is attempting to shift a financial burden to municipalities that it had theretofore shouldered itself." at 9 (10.31.06). This council has also held that a portion of yearly appropriations act which required rural municipalities served by the state police, to enter into cost sharing arrangements with the state, was a mandate. IMO Complaints Filed by the Mayors of Shiloh Borough et al. at 3 (12.12.08). A change in policy that shifts costs onto municipalities is a mandate.

Chapter 54 satisfies this first prong because it imposes a mandate upon New Jersey municipalities. It provides that:

Every new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the effective date of P.L. 2014, c.54 which is primarily used for traffic stops shall be equipped with a mobile video recording system.  
N.J.S.A. 40A:14-118.1

Because chapter 54 requires that mobile video recording systems be included with any "municipal police vehicle

purchases leased or acquired on or after [March 1, 2015]" it is a mandate. Consequently, the first prong has been met.

**ii. Chapter 54 Requires Additional Direct Expenditures to Implement**

The second prong requires that "additional direct expenditures" be required to implement the statute. This means that the local unit must merely show that the statute imposes a cost on local government. In IMO Allamuchy Township Board of Education, the BOE fulfilled this prong by demonstrating that the implementation costs of the Anti-bullying Bill of Rights would cost the district "\$6,000, with annual subscription updates of \$1,000" and "additional personnel costs... [of] \$2,000-4,000 a year." *Ibid.* at 4.

These costs must flow directly from the law at issue. For example, in Shiloh the state sought to *reapportion the cost* of existing rural state police coverage, and towns could demonstrate that cost as being a result of the states yearly appropriations act. *Ibid* at 7. But, in reviewing provisions of another yearly appropriations act that *prohibited the expansion* of rural state police coverage, this Council held, "the language of the act simply cannot be construed to be an unfunded state mandate because no direct expenditures are required to be incurred ... in order to

implement the language [of the act]." In Re Complaint by the Township of Blairstown at 3 (5.23.11).

In Shiloh the language of the appropriations act required municipalities to pay part of the cost for rural state police coverage. The costs flowed directly from the law. But in Blairstown, the law merely said that the state would not expand rural police coverage. So, this Council determined that there were no costs imposed directly on municipalities.

In the case *sub judice*, Deptford has adequately demonstrated that there are costs which directly flow from chapter 54's implementation. Indeed, its statutory language and the legislative history itself indicate that this law requires additional direct expenditures to implement. The law requires that municipalities equip their newly purchased police vehicles with "mobile video recording system[s]." That is a direct expenditure. The OLS fiscal estimate attached to A-2280, the bill which became chapter 54, likewise interpreted the law as requiring direct expenditures. It states, "A March 2012 online article from New jersey.com reported that the City of Newark spend \$336,000 on the installation of cameras on 52 patrol and



traffic cruisers, or an estimated \$6,461.53 per vehicle." A-2280, Legislative Fiscal Estimate (5.13.14).

Deptford's analysis demonstrates that chapter 54 would cost substantial sums to implement. Deptford received two quotes from two separate vendors on the cost of implementing either a vehicle mounted video recording system or a body worn camera system. D.C. ¶ II, § 4. Initially, Deptford would have to make an expenditure of \$49,483.07 for the installation of vehicle mounted cameras or \$63,483.00 for purchase of body worn cameras. Id. at 2. Additional costs associated with body worn cameras such as charging, uploading stations, storage costs and support fees would be \$63,483.64 in the first year and approximately \$47,124.00 every subsequent year for the next five years. Id. Attachment ¶ II, § 4. Consequently, Deptford's complaint demonstrates that chapter 54 requires direct expenditures from municipalities to implement.

**iii. Chapter 54 Fails to Authorize Resources, Other than the Property Tax, to Offset the Additional Direct Expenditures**

The last prong which a municipality must meet is to demonstrate that the statute at issue fails to authorize resources, other than the property tax, to offset additional direct expenditures. Because the \$25 surcharge on DUI convictions, enacted through chapter 54, does not adequately

cover the total increased costs incurred, the law fails to authorize such a resource.

In order for a statute to adequately "fund" a mandate, it must cover the entire cost of implementation. Put another way, partial funding does not equate to funding a mandate. IMO Complaints Filed by the Mayors of Shiloh Borough et al. at 3. Indeed, as this Council has held, "if the state's method of funding a mandate is seriously flawed, to the point of being illusory, the council will not be deferential to such an amendment." IMO a Complaint Filed by Ocean Township and Frankford Township, at 12 (08.02.02). In Ocean Township, this Council held that a provision of the Municipal Land Use Law (MLUL), which allowed municipalities to recover costs through fees adequately "funded" a statutory mandate. Id. Conversely, in IMO Allamuchy Township Board of Education, the council held that a statutory fund created to offer grants to partially pay the cost of implementing the Anti-Bullying Bill of Rights Law did not "fund" the statutory mandate. Ibid. at 5.

Deptford's complaint demonstrates that chapter 54 does not adequately cover the cost municipalities must expend in implementing it. Although the law provides for a funding source through a \$25 surcharge for DUI convictions paid to

the municipality in which the summons was issued, it is inadequate. N.J.S.A. 39:4-50(i). Deptford's fiscal analysis indicates that the cost of these systems far outstrips the revenues created by the \$25 surcharge.

The township would likely receive roughly \$187.50 per month from the surcharge. Deptford demonstrates how inadequate this resource is by stating how long it will take to recover its costs. Recovering the cost of the first in-car camera would require 7.58 years, subsequent cameras would require 3.12 years. Recovering the cost of 60 body cameras would require 28.21 years and annual maintenance fees for these devices would require 20.94 years. D.C. at appendix.

The DUI surcharge is not a sufficient mechanism for municipalities to recover their costs. Police cruisers have a very limited life span, indeed municipalities cannot bond for their purchase because their useful life is less than five years. See N.J.S.A. 40A:2-21; see also N.J.S.A. 40A:2-22(g)(2). In the League's experience police cruisers must be replaced every two to five years. \$187.5 a month in revenue is simply not enough to recover the costs of these systems during the vehicle's life.

Chapter 54's legislative history also demonstrates that this mandate is unfunded. This Council has used OLS fiscal estimate to determine the sufficiency of funding. In making the determination in IMO Allamuchy this council relied in part on that statute's legislative fiscal estimate. Id. at 6.

Here, the OLS fiscal estimate attached to A-2280, the bill which became chapter 54, explicitly states that the cost of implementing the law will be higher than the revenues received. The statement reads:

The Office of Legislative Services (OLS) estimates that total municipal costs associated with the enactment of this bill will likely be higher than the municipal share of revenue raised by the increased fee on DUI convictions. Insufficient information is available to estimate the impact on individuals and municipalities. A-2280, Legislative Fiscal Estimate (5.13.14).

This fiscal estimate alone demonstrates that the \$25 DUI surcharge is an inadequate resource and therefore chapter 54 is an unfunded mandate.

#### **iv. Chapter 54 is an Unfunded Mandate**

In conclusion, chapter 54 is an unfunded mandate under the New Jersey Constitution and the LMA because it meets every one of the three prongs laid out in IMO

Complaints Filed by the Monmouth-Ocean Education Services

Commission et al. First, it imposes a mandate on municipalities by requiring them to acquire "mobile video recording system[s]" when purchasing police cruisers used primarily for traffic stops. Second, chapter 54 requires tens of thousands of dollars to implement. Third, chapter 54 fails to authorize resources, beyond the property tax, which allow municipalities to fully recover these costs. Consequently, this council must determine that chapter 54 is an unfunded mandate.

**II. This Council Should Grant Deptford's Request for Injunctive Relief**

This Council should grant Deptford's request for injunctive relief under well settled judicial principles. The "function of this council is judicial." IMO Complaints Filed by the Highland Park Board of Education and the Borough of Highland Park, at 7 (08.05.99). In determining whether to grant injunctive relief, this Council, like a court should consider the following four factors, namely: i) that a preliminary injunction should not be issued except when necessary to prevent irreparable harm; ii) that temporary relief should be withheld when the legal right underlying the plaintiff's claim is unsettled; iii) that preliminary injunctions should not issue where all material

facts are controverted; and 4) the relative hardship to the parties in granting or denying relief. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982). Applying these factors to the case *sub judice* indicate that this Council should grant Deptford's request for injunctive relief.

**i. New Jersey Municipalities Will Suffer Irreparable Harm if this Council Denies Its Request for Injunctive Relief**

First, all municipalities will suffer irreparable harm if Deptford's injunction is not granted because, barring this relief, New Jersey municipalities will have to dedicate further taxpayer resources to comply with chapter 54. New Jersey has 565 municipalities, many of which have their own police departments. As stated above, because of the limited useful life of police cruisers, municipalities may not bond for their acquisition. *Ibid.*, See N.J.S.A. 40A:2-21; see also N.J.S.A. 40A:2-22(g)(2).

Because municipalities cannot bond for police cruisers, their cost must come out of the municipal operating budget. This means that they are subject to the 2% municipal tax levy cap. P. L. 2010 c. 44. The effect of which is, that every dollar spent on implementing chapter 54, is a dollar which cannot be spent on other necessary areas such as public works, police or fire costs. Unless this Council grants Deptford's injunction, Chapter 54 will require

municipalities and local taxpayers expend resources they cannot and will not be able to recover.

**ii. The Legal Rights Underlying Deptford's Complaint is Settled Law**

Article VIII, § II, ¶ 5 of the New Jersey Constitution and the LMA are well settled law. If a statute places a mandate on local government, which requires the expenditure of resources to implement, but does not provide a means to recover the cost beyond the property tax, that statute is an unfunded mandate. IMO Complaints Filed by the Monmouth-Ocean Education Services Commission et al., Ibid. As explained above, Deptford's complaint demonstrates that chapter 54 is an unfunded mandate.

**iii. The Material Facts in this Case are Not Controverted Because This Case Turns on Legal Determinations, Not Factual Ones**

This case entirely revolves around whether or not chapter 54 is an unfunded mandate. That is a legal, not a factual question. Deptford merely needs to show that the law meets the three prong test laid out in Monmouth-Education Services Commission . The state argues that the council should not grant relief because Deptford has not explicitly stated when exactly it purchased its six cruisers in order, conceivably, to show that chapter 54 doesn't apply to them.

Db10. That argument misses the mark. Whether or not chapter 54 applies to those particular cruisers is irrelevant as to whether or not that law is an unfunded mandate.

Consequently, this Council should grant Deptford's request for injunctive relief pursuant to the Crowe factors discussed above.

### **III. Conclusion**

This Council should invalidate chapter 54 because it is an unfunded mandate pursuant to Article VIII, § II, ¶ 5 of the New Jersey Constitution and the LMA. Deptford's complaint meets every one of the three prong test laid out in IMO Complaints Filed by the Monmouth-Ocean Education Services Commission et al. First, chapter 54 mandates that municipalities install "mobile video recording system[s]" in their new police cruisers. Second, this will cost municipalities tens of thousands of dollars. Third, chapter 54 does not fully provide for any other complete funding mechanism beyond the property tax. The \$25 surcharge does not cover the expense. In sum, there is no doubt that Chapter 54 is an unfunded mandate.

Lastly, this Council should grant Deptford's request for injunctive relief because it meets the standards laid out in Crowe. Also, chapter 54's continued applicability will cause



irreparable harm to New Jersey municipalities because its cost will fall directly on the operating expenses of municipalities.

Respectfully Submitted,



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