



State of New Jersey
COUNCIL ON LOCAL MANDATES
140 EAST FRONT STREET
TRENTON, NJ
(609) 984-9738
(609) 984-9737 FAX

Hon. John A. Sweeney, AJSC (*ret.*)
Chair

Mailing Address:
PO Box 627
Trenton, NJ 08625-0627

IN THE MATTER OF THE COMPLAINT FILED BY THE NEW JERSEY
ASSOCIATION OF COUNTIES No. 1-19

MEMORANDUM DECISION and ORDER

The New Jersey Association of Counties (NJAC) filed a Complaint with the Council on Local Mandates asserting that P.L. 2018, c.72 (2018 Vote By Mail Law), N.J.S.A.19:63-3a (1) and P. L. 2019, c. 265 (2019 Vote By Mail Law), N.J.S.A. 19:63-3a (2); N.J.S.A. 19:63-3.1.a and N.J.S.A. 19:63-3.1.b constitute unfunded mandates in violation of the New Jersey Constitution, Art. VIII, Sec. 2, para.5 and N.J.S.A. 52:13 H-2. Respondent, the State of New Jersey, filed an Answer denying that the challenged laws were unfunded mandates, and that they also meet the criteria of one of the five constitutional exemptions provided in N.J. Const., art. II,sec.1, para.3.

A hearing was held on September 23, 2019 and written closing arguments were simultaneously submitted on October 23, 2019. On October 25, 2019, the State filed a written objection to the closing submitted by NJAC because it contained data (new evidence) that is not in evidence in the record of the hearing.

The Council met in executive session on November 13, 2019 to decide all issues before it. The Council also decided that it was in the public interest to publish a Memorandum Decision and Order in an expedited manner to allow the twenty one County Clerks sufficient time to prepare for any upcoming elections that have been

scheduled and to allow ample time for the preparation and publication of a formal written opinion to follow within the next ninety (90) days.

The Council unanimously rules as follows:

1. We sustain the objection of the State to the inclusion of additional factual evidence in NJAC's written summation, finding that it would be fundamentally unfair to allow a party, through counsel, to supplement the record without the consent of the opposing party and without the permission of the Council.

2. We further find that it was never in dispute that the challenged provisions of the law constitute a "mandate" by the Legislature to the County Clerks; and we find and determine that a mandate was, in fact, created.

3. After passage of the challenged provisions, the Legislature amended Section 14 of P.L. 2018, c.72 and appropriated from the General Fund the sum of \$2,000,000.00 "to be distributed among the counties as reimbursement for the costs of implementing" the challenged provisions of the "Vote by Mail" law. We find and determine that this appropriation constitutes a clear and unequivocal recognition by the Legislature that the mandate created by the amendments to the "Vote by Mail" law required some degree of funding in order to be valid. We find it unnecessary to pass upon the adequacy of such funding since it has not been made available for distribution to the counties.

4. Following adoption of the amendments to the "Vote by Mail" law, the Governor signed it into law rather than exercising his option to veto it completely or by "line-item" veto. Thereafter, the Governor "froze" the funding authorized by the Legislature, thereby rendering the funds unavailable for the stated purpose.

5. In the absence of any funding of the mandate, we find and determine that the challenged laws constitute unfunded mandates.

6. We reject the Respondent's contention that one of the five exemptions from the funding requirements of the law applies in this case. A more detailed explanation will be provided in the full written opinion that will follow.

7. The Council holds that the challenged provisions of the law shall cease to be mandatory in their effect and shall forthwith expire.

IT IS SO ORDERED.

Dated: November 15, 2019

For a unanimous Council,

A handwritten signature in black ink, appearing to read "John A. Sweeney". The signature is fluid and cursive, with a large initial "J" and "S".

John A. Sweeney, AJSC (Ret.)

Chairman