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) STATE OF NEW JERSEY
) COUNCIL ON LOCAL MANDATES
)
) Case No. 12-10
)
) MEMORANDUM DECISION
) and ORDER
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)
)

In Re Complaint filed by the
TOWNSHIP OF BLAIRSTOWN

Blairstown, a northwestern rural New Jersey community, challenges a portion of the New Jersey Appropriations Act P.L. 2011, Ch. 35, providing that no funds appropriated to the State Police be used to protect inhabitants of rural sections of the State pursuant to state law if such services were not provided in the prior fiscal year; nor can such services be expanded in any municipality beyond those provided in the prior fiscal year. Blairstown asserts that the section constitutes an unfunded mandate contrary to the provisions of N.J. Const., Art. VII, Sec. 2.p 5(a).

The facts necessary to decide this matter in a summary manner are not in dispute, and we detail the factual background of the relationship between Blairstown and the State regarding the issue presented.

The State Police have been providing police protection and services to Blairstown since 1921 when the Legislature enacted N.J.S.A. 53:2-1. Blairstown has been protected by a part-time police department for the past several years. The State Police have provided coverage only during those hours when no part-time officers were on duty, the intervals having varied over the intervening years. Most recently, prior to September, 2006, State Police coverage was provided from 6:00 p.m. to 7:00 a.m. each day. In September, 2006, the town began to provide extended police coverage. From that time forward, the State Police reduced its coverage by three (3) hours per day, providing service from 10:00 p.m. to 7:00 a.m.

In the Spring of 2010, Blairstown notified the State Police that it would be reducing its hours of part-time police protection by four (4) hours per day and requested the State Police to increase its coverage accordingly, effective July 1, 2010. On June 21, 2010, the State Police informed Blairstown by letter that its request for increased coverage was denied. Thereafter, the State defended its position by quoting language from the Appropriations Act requiring that "none of the monies appropriated to the Division of State Police shall be used to provide police protection to the inhabitants of rural sections pursuant to R.S. 53:2-1 ... in a municipality beyond the level provided in the previous year."

Blairstown argues that the State's refusal to provide services is in contravention of the law, N.J.S.A. 53:2-1, as well as an unacceptable departure from the State's "custom and practice." It also points out that in 2010, Stillwater Township, a rural municipality which disbanded its municipal police department in December, 2009, was, nevertheless, the beneficiary of full State Police coverage.

Blairstown also argues that the State is attempting to achieve, in a different manner, what the Council already declared to constitute, an unfunded mandate. On December 12, 2009, we ruled that a provision of the 2009 Appropriations Act requiring municipalities to reimburse the State for a portion of the cost to provide such police services was unconstitutional.

Finally, Blairstown contends that the State is essentially "co-opting" the local police department by forcing the municipality to continue to maintain police services at the same level provided in the previous fiscal year at its own expense. This, it contends, is an impermissible unfunded mandate that will cost the town in excess of \$640,000.00 per year.

The State cites the following language from the Fiscal Year 2010 Appropriations Act, P.L. 2010, c.35 as the reason for the State's assertion that the State Police do not have the legal authority or obligation to provide the additional services requested by Blairstown. This is the same language Blairstown has challenged as an unfunded state mandate:

"Notwithstanding the provisions of any other law or regulations to the contrary, none of the monies appropriated to the Division of State Police shall be used to provide police protection to the inhabitants of rural sections pursuant to R.S. 53:2-1 in a municipality in which such services were not provided in the previous fiscal year or to expand such services in a municipality beyond the level at which such services were provided in the previous fiscal year."

In its challenge to the provisions of the fiscal year 2010 Appropriations Act, Blairstown cites a prior decision of the Council on Local Mandates **In The Matter of Complaints Filed By The Mayors of**

Shiloh Borough and the Borough of Rocky Hill and By Southampton Township, Deerfield Township, Shamong Township, Upper Deerfield Township and Buena Vista Township, decided October 22, 2008, which invalidated language in the Fiscal year 2009 Appropriations Act which mandated that each municipality receiving rural patrol services from the State Police enter into a cost-sharing service agreement with the State Treasurer and pay for a portion of those services.

In defending the challenged language of the Fiscal Year 2010 Appropriations Act, the State asserts that the language imposes no obligations or costs on Blairstown, but merely preserves the status quo.

The facts of this case clearly support the assertion by the State the challenged language imposes no obligations or costs on Blairstown. The language of the Act simply cannot be construed to be an unfunded State mandate because no direct expenditures are required to be incurred by Blairstown in order to implement the language. Our Constitution defines an unfunded mandate as a law, rule or regulation that does not authorize resources, other than the property tax, to offset the additional direct expenditures required for [its] implementation. N.J. Const., Art. 3, Sec. p.5. The language simply preserves the status quo. Had Blairstown not increased the hours of operation of its part-time municipal police department in 2006, the level of State Police rural patrol services would have remained the same, and would have been preserved by the very language Blairstown is challenging. The election to increase hours of local police services in 2006 was the sole cause of the increased financial obligation on Blairstown, not the language of the Fiscal Year 2010 Appropriations Act.

For the foregoing reasons, the State's Motion to Dismiss is granted and Blairstown's demand for judgment is denied.

The above Opinion was adopted by the Council and was intended to be previously issued. Council members Jack Tarditi (Chair), Leanna Brown, Victor R. McDonald, III, Rita E. Papaleo, Ryan J. Peene, John A. Sweeney, and Janet L. Whitman join in this Opinion.

Dated this 23rd day of May, 2011

A handwritten signature in black ink, appearing to be "John A. Sweeney", written over a horizontal line.