

IN THE MATTER OF A COMPLAINT FILED BY DEPTFORD TOWNSHIP

Council on Local Mandates
Argued February 17, 2016
Decided February 17, 2016
Written Opinion Issued April 20, 2016

Syllabus

(This syllabus was prepared for the benefit of the reader and is not part of the opinion of the Council. The syllabus does not purport to summarize all portions of the opinion.)

The legislation challenged here mandates that, upon its acquisition of a police vehicle, every municipality must equip the vehicle with a mobile video recording system, or, alternatively, must equip police officers with a body-worn video recording system. The only funding authorized by the Legislature is a \$25 surcharge to be levied on defendants convicted in the local municipal court of driving while intoxicated. Deptford Township presented proofs of the projected costs of a video recording system and of the historical record of DWI convictions in its municipal court. The State offered no contrary evidence, nor did it otherwise address Deptford's proofs.

HELD: N.J.S.A. 40A:14-118.1 is unconstitutional. (1) Deptford has standing to bring this action for declaratory judgment notwithstanding that it did not allege that it had an immediate need to acquire any police vehicles; (2) the uncontradicted and unrebutted proofs show that the anticipated revenue from the \$25 surcharge would fall far short of the anticipated costs; (3) the purported legislative funding is thus "illusory" as found and explained in earlier Council decisions, and (4) henceforward, legislation imposing a local mandate should be accompanied by a showing as to the sufficiency of the authorized funding.

Council Chair John A. Sweeney, Leanna Brown, Victor R. McDonald, III, Robert R. Pacicco, Christopher Pianese, John K. Rafferty, Robert R. Salman and Edward P. Zimmerman join in the opinion. Council member Jack Tarditi did not participate in the decision.

Brian D. Shotts argued the cause on behalf of complainant (Long, Marmero & Associates, LLP, attorneys)

Cameryn J. Hinton, Deputy Attorney General, argued the cause on behalf of respondent State of New Jersey (John J. Hoffman, Acting Attorney General, attorney)

Edward Purcell, Associate Counsel, argued the cause for New Jersey State League of Municipalities, *amicus curiae*

OPINION

Rulings by the Council on Local Mandates only determine whether or not the legislation before the Council violates the State mandate/State pay amendment to the New Jersey State Constitution. The Council was created to curtail the practice of imposing the costs of new mandates on property taxpayers. The Council's decisions do not address the merits of the challenged mandate, in this case requiring police vehicles or police officers to be equipped with mobile video recording systems. Creating public policy rests with the Legislature and Executive branches; determining whether such a policy violates the State mandate/State pay amendment rests with Council.

Here Deptford Township seeks to invalidate N.J.S.A. 40A:14-118.1 as imposing an unfunded mandate in violation of N.J. Const. Art. VIII, sec. 2, para. 5(a) and N.J.S.A. 52:13H-2. The text of the statute is this:

Every new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the [March 15, 2015] effective date of P.L. 2014, c. 54 (C. 40A:14-118.1 et al.) which is primarily used for traffic stops shall be equipped with a mobile video recording system. As used in this section, 'mobile video recording system' means a device or system installed or used in a police vehicle 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.

In conjunction with that enactment, the Legislature amended N.J.S.A. 39:4-50 to increase the surcharge levied on persons convicted of driving while intoxicated by \$25, "to be used for the cost of equipping police vehicles with mobile video recording systems pursuant to the provisions of [N.J.S.A. 40A:14-118.1]".

The dispute was presented to the Council on cross-motions for summary judgment. Deptford argues that, even with the enactment of the \$25 surcharge, the Legislature has failed to “authorize sufficient resources, other than the property tax, to offset the direct expenditures” required to fulfill the N.J.S.A. 40A:14-118.1 mandate. The State’s response is, first, that Deptford is without standing to challenge the State and, second, that the surcharge must be held to satisfy the State’s funding obligation because no further funding is presently determinable and because N.J.S.A. 52:13H-2 “expressly precludes determinations of funding adequacy.”

I.

In deference to the Legislature, we do not address the merits of the challenged mandate. But we are satisfied that Deptford has standing to bring this action. The State’s contrary argument is based on the fact that Deptford has not asserted any “immediate” plan to purchase or otherwise procure any police vehicles. The State says that Deptford’s claim is “purely speculative and hypothetical” because the municipality “may or may not need to acquire vehicles in the future” and thus the statute presently imposes no “discernible” mandate on the municipality.

That argument ignores reality. Deptford's claim is neither speculative nor hypothetical. Its future acquisition of police vehicles is certain and near. The issue of constitutionality is ripe for decision. There is no benefit to be gained by adjourning this proceeding until Deptford needs a new police car. To the contrary, there is every reason to give Deptford – and the hundreds of other New Jersey municipalities – early guidance as to their present and future obligations. See, e.g., Finkel v. Township of Hopewell, 434 N.J. Super, 303 (App. Div. 2013).

New Jersey law expressly permits – indeed, encourages – declaratory rulings in this very setting. See, N.J.S.A. 2A:16-50 to -62, based on the Uniform Declaratory Judgment Act.

N.J.S.A. 2A:16-51 states the beneficial aim of declaratory rulings: “. . . to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” N.J.S.A.

2A:16-53 is particularly germane here:

[A] person . . . whose rights or status are affected by a statute . . . may have determined any question of construction or validity arising under this statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.”

Deptford’s standing to seek declaratory relief is, in short, unquestionable.

II.

In challenging the funding of the State’s mandate, Deptford presented two proposals solicited from vendors of mobile video recording systems. One offered a vehicle-mounted system, initially costing \$10,827.99 for installation plus \$29,548.16 for equipping six of the township’s police vehicles. The second vendor offered a body-worn system costing \$15,548.00 for installation and \$726 for each of the township’s police officers. The quotations gave notice of further and future costs, not only for equipping the balance of the police vehicles, but also for warranties, service, upgrades of hardware and software and the like. The proposal for the body-worn system, indeed, offered a comprehensive five-year plan with a total cost to the municipality of \$251,979.64.

Deptford also presented a study showing that DWI convictions in its municipal court averaged 7.5 per month, which would yield annually \$2250 in DWI surcharges, less than six percent of the costs documented by the municipality.

The State has not directly addressed the figures in those estimates, nor has it submitted any estimates of its own. Moreover, it has not offered any explanation of, or justification for, the Legislature’s provision only of the \$25 surcharge to fulfill its funding obligation. Rather, it

presents only a litany of factors that might possibly limit or reduce Deptford's projected costs, e.g., the costs "would be determined by the choices Deptford makes"; "other vendors or suppliers may be able to supply the cameras"; "compliance with the statute can be strategically planned to conserve costs"; the township "does not know how many vehicles it may purchase"; "there is no way Deptford or even the Council can know how much [DWI funding] will be at Deptford's disposal"; grant funding may be available "to offset the implementation costs of the present mandate".

Those "what-ifs" do not warrant deferring Deptford's constitutional claim to some indefinite future, as the State urges. Deptford's costs might ultimately be less than estimated, but the enormous gap between the municipality's projected costs and its surcharge revenues – documented by Deptford and unrebutted by the State – compels the conclusion that the authorized funding is, on its face, constitutionally inadequate.

In reaching that conclusion, the Council has considered the provision in N.J.S.A 52:13H-12(a) that "it shall not have the authority to determine whether the funding of any statute . . . is adequate." The Council addressed that language in Complaint of Shiloh Borough (decided December 12, 2008). The Legislature there had mandated that certain rural communities must share the costs of State Police protection. The State Treasurer calculated that the costs to the communities would total \$12.5 million; an appropriation of "not to exceed \$5 million" was made to satisfy in part that mandate. The Council held that the \$12.5 million mandate was "unfunded" because it was only partially offset by the \$5 million appropriation. Building on its earlier opinion in Complaint of Ocean/Frankford Townships (decided August 2, 2002), the Council reasoned:

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 and leave an acknowledged balance of the cost to be shouldered by the local units. As stated in Ocean/Frankford, the Council cannot allow the constitution “to be frustrated by giving 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.

The purported funding here is similarly illusory. The proofs show that the \$25 surcharge would fall far short of funding the instillation of either a vehicle-mounted or body-worn mobile video recording system. The Council cannot give blind deference to the Legislature’s decision to authorize only that funding of its mandate: to do so would leave the Legislature as the sole judge of its constitutional performance and thus render the “State mandate/State pay” principle meaningless. Legislation containing a local mandate should be accompanied by a statement or, where appropriate, a fiscal note setting forth the manner in which sufficient funding is, or before the effective date of the mandate will be, provided to cover the anticipated costs of municipal compliance without resort to other sources such as increased property taxes, grants, loans and the like.

Accordingly, the Council declares N.J.S.A. 40A:14-118.1 to be unconstitutional. That determination renders nugatory the \$25 surcharge described in N.J.S.A. 39:4-50(i) and the regulations proposed in N.J.S.A. 40A: 14-118.2.