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The Honorable John A. Sweeney, A.J.S.C. (Ret.), Chairman  
New Jersey Council on Local Mandates  
135 West Hanover Street, 4th Floor  
P.O. Box 627  
Trenton, New Jersey 08625-0627

Re: In the Matter of a Complaint Filed by  
the Borough of Leonia and a Complaint  
Filed by the Borough of Fort Lee (Consolidated)  
Complaint No. COLM 0011-22

Dear Judge Sweeney:

Please accept this letter on behalf of Respondent, State of New Jersey ("State"), in reply to the opposition of the Boroughs of Leonia and Fort Lee ("Boroughs"), to the State's motion to dismiss the consolidated complaints filed by the Boroughs in the above-captioned matter. Nothing in the Boroughs' opposition supports their claim that N.J.S.A. 40A-1 to -3 (the "Act") constitutes an unfunded mandate. Moreover, the Boroughs' argument that the Act operates as an impermissible annual tax is not within the jurisdiction of this forum. Therefore, the Council should dismiss the Boroughs' complaints.



First, the Act irrefutably provides a funding mechanism that permits a municipality to "establish a reasonable administrative fee for the certificate of registration" required by the Act. N.J.S.A 40A:10A-2(b). The Act requires certain property owners to purchase liability insurance for their property and file a proof of insurance with the municipality. In turn, municipalities are required to issue a "certificate of registration" to the property owner acknowledging receipt of the "certificate of insurance" submitted to the municipality by the affected property owner. N.J.S.A. 40A:10A-2(a), (b).

There is also no factual basis for the Boroughs' claims that efforts required by a municipality to ensure compliance with the Act will not cover a municipality's costs through a summary proceeding to collect a fine of not less than \$500 but no more than \$5,000 against an owner who fails to comply with the provisions of the Act. N.J.S.A 40A:10A-2(b). The extent of compliance of the affected property owners is entirely unknown and the cost of any summary proceeding to enforce is unknown. Neither is a basis for asserting an unfunded mandate.

What is known is that a municipality may adopt a reasonable administrative fee to recover all costs associated with the Act. Such costs may be recovered by a municipality through the adoption of an ordinance for "a reasonable administrative fee for the

certificate of registration," such registration demonstrating "compliance with section 1 of [the Act] with the municipality. . . ." N.J.S.A. 40A:10A-2(a), (b). Far from the recovery of costs being "illusory," as asserted by the Boroughs, the Act could not be clearer in providing municipalities the ability to recover all costs through adoption of a reasonable administrative fee.

"Reasonable administrative fee" cannot be interpreted other than to permit a municipality to recover those costs associated with the administrative costs incurred by a municipality in complying with the Act. The Council made this clear in addressing this particular issue in Ocean Township (Monmouth County) and Frankford Township:

[T]here is no obvious reason why the Legislature would have chosen to authorize a fee that offsets part, but not all, of the zoning permit system, particularly given that professional services, those that Claimants assert are non-compensable, would foreseeably be the largest component of the costs of administering the system. Absent a showing by Claimants of an authoritative legislative statement or judicial interpretation limiting \$18 fees as they propose, the Council will read \$18 as authorizing municipalities to recover all of the reasonable costs of operating the zoning permit system.

Id. at 11 (emphasis added).

Because the Act provides a municipality with the ability to take the necessary steps to recover all costs associated with the registration of proof of insurance, as well the costs for enforcement of the required filing of proof of insurance, there is

no unfunded mandate. The municipalities are required to accept certificates of insurance and to issue certificates of registration. How they implement the statute is left to each municipality. Nevertheless, the Act plainly states a municipality may adopt an administrative fee for the costs of the insurance certificate registration process. Therefore, no matter how a municipality determines to best implement the Act (i.e., building a data registry, adding to an existing registry structure, etc.), the Act authorizes resources to fund such endeavor through a reasonable administrative fee.

The Boroughs' also argue that the Council's decision in In the Matter of A Complaint Filed By Ocean Township (Monmouth County) and Frankford Township, is distinguishable from the instant case. This argument is without merit. As noted above, contrary to the Boroughs' assertion, applying the Council's analysis in Ocean Township to the instant case demonstrates that the reasonable administrative fee afforded to municipalities for recovery of all costs related to the Act, meets the criteria set forth by the Council in the Ocean Township decision.

As to what a municipality may deem to be a "reasonable" administrative fee, the potential costs of carrying out the provisions of the Act will likely vary from one municipality to another, as illustrated by the significant difference in alleged

expenditures provided by the two Boroughs in their respective complaints. The costs alleged by the municipalities are speculative at best and are irrelevant because whatever the real costs are, they may be recovered under the Act, through the adoption of an ordinance by the municipality for the collection of a reasonable administrative fee.

The crux of the analysis before the Council is whether or not the costs associated with the Act are permitted to be offset by the municipal governing body's adoption of a reasonable administrative fee. They are. Therefore, there is no unfunded mandate created by the Act.

Second, the Council does not have jurisdiction of the Boroughs' argument that the Act operates as an impermissible annual tax. Such a claim belongs in the New Jersey Superior Court, Tax Court, and is to be evaluated under the applicable tax laws. See American Trucking Ass'ns v. State, 164 N.J. 183 (2000); American Trucing Ass'ns v. State, 34 N.J. Super. 1, 10 (App. Div. 1999), rev'd on other grounds, 180 N.J. 377 (2004); Dep't of Transp. V. Barton Inv., 326 N.J. Super. 282, 287 (App. Div. 1999); Weisbrod v. Township of Springfield, 1 N.J. Tax 583, 590 (Ta Ct. 1980).

To the extent the Council reviews such a claim, because the administrative fee is limited in its application to the affected property owners under the Act and limits the "reasonable"

administrative fee to those costs associated with the Act, there is no basis for the Boroughs' assertion that the administrative fee operates as an annual tax. There is no municipal-wide application of the Act to anyone other than the specified property owners required to purchase the necessary liability insurance and to register proof of such insurance with the municipality.

Moreover, as noted in the State's previously filed letter in support of its motion to dismiss, the Council's decision in In the Matter of A Complaint Filed By Ocean Township (Monmouth County) and Frankford Township, COLM 10-01 (August 2, 2002), held that authorization by the Legislature for a municipality to establish reasonable fees to cover administrative costs is different from a tax. Id. at 8. Additionally, the Council found in Ocean Township that the administrative fee authorized under the Municipal Land Use Law ("MLUL") was specific to individual properties that fell within the specific category set forth in the MLUL; that is, those applying for a zoning permit. Ibid. In so ruling, the Council noted that the administrative fee was specific to affected properties and thus was not the equivalent of a general property tax impacting all property owners. Ibid.

That is exactly what is presented to the Council in this case: the ability of municipalities to recover costs from the Act through an administrative fee that applies only to the affected property

owners and not to municipal residents as a whole. Therefore, the Boroughs' argument that the Act operates as an impermissible annual tax is without merit and the Council should dismiss the Boroughs' complaints.

**CONCLUSION**

For all of these reasons and those set forth in the State's motion and this reply, L. 2022, c. 92 is not an unfunded mandate and the State's motion to dismiss should be granted and the Boroughs' complaints dismissed with prejudice.

Respectfully submitted,

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