

State of New Jersey

Council on Local Mandates

In re Complaint Filed by the Borough of Leonia and
In re Complaint Filed by the Borough of Fort Lee (Consolidated Actions)

Re: N.J.S.A. 40A:10A-1 to -3

COLM No. 0011-22

Decided: August 28, 2023

Brian Chewcaskie, Esq. argued the cause for Claimants, Boroughs of Leonia and Fort Lee.

George N. Cohen, Deputy Attorney General, argued the cause for Respondent, State of New Jersey

Council: John A. Sweeney, AJSC (Ret.), Chair, Victor R. McDonald III, Vice-chair, and members David Fiore, Robert R. Salman, Esq., Robert Landolfi, Nuno Afonso, Esq., and Nancy Brown. Robert R. Pacicco recused himself and did not participate in the case.

Factual Background and Procedural History

Respondent the State of New Jersey seeks the summary dismissal of complaints filed by the Boroughs of Leonia and Fort Lee, which challenge as an unfunded mandate L. 2022, c. 92, (the Act) signed into law on August 5, 2022. The Act, entitled “Liability insurance requirements for owners of businesses or rental units; coverage amounts,” codified as N.J.S.A. 40A:10A-1 to -3, mandates liability insurance coverage to be maintained by owners of businesses, rental units, and four or fewer multifamily unit homes located within a municipality (referred to a “subject business owners”) in §1 of the Act. See N.J.S.A. 40A:10A-1. Further, §2 requires the subject business owners to annually register the required certificate of insurance with the municipality and provides:

the governing body of a municipality may, by ordinance, establish a reasonable administrative fee for the certificate of registration

required pursuant to subsection a. of this section for properties located in that municipality. The governing body of a municipality may collect, through a summary proceeding pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c. 274 (C.2A:58-10 et seq.), a fine of not less than \$500 but no more than \$5,000 against an owner who failed to comply with the provisions of this act.

[N.J.S.A. 40A:10A-2(b).]

On November 14, 2022, the Borough of Leonia submitted an initial complaint, later amended on November 22, 2022, to include Borough Resolution 2022-250. The Borough asserted N.J.S.A. 40A:10A-2(b) is “an unfunded mandate in violation of the New Jersey Constitution, article VIII, § 2, ¶ 5, and N.J.S.A. 52:13H-2,” suggesting the Act failed to authorize resources, other than revenue from municipal property tax, to offset additional direct expenditures resulting from a municipality’s implementation of the requirements of the Act. Noting a prior draft version of the Act delineated responsibility to the State Department of Community Affairs to create and maintain the business insurance registry, Claimant argues the Act’s provisions, as adopted, provide no state funding to support a business insurance registry, but instead imposes that undue burden on the municipality. Leonia, a Borough of approximately 9,000 people, states the initial anticipated annual taxpayer costs to fulfill the Act’s requirements would be \$3,213, which would later increase to \$5,400.

On December 29, 2022, the Borough of Fort Lee filed a similar complaint asserting the same legal challenge, supported by Borough Resolution R-4. Fort Lee, a Borough of over 40,000 people, stated the anticipated annual taxpayer costs would be \$35,000. The two complaints were consolidated under one docket number, by Council Order dated January 22, 2023.

The State moves to dismiss the complaints, arguing the Act imposes no unfunded costs to municipalities because its plain language permits imposition of a reasonable administrative fee to

establish the insurance registry, which is paid by the subject business owners. The State urges the Act affords “a mechanism for a municipality to recover costs” associated with the implementation of the requirements of the Act, and also includes provisions for enforcement through “the recovery of penalties for failure . . . to comply with the Act.” The State concludes, absent proof of unfunded costs, the complaints must be dismissed.

In reply, the Boroughs reiterate the Act requires each municipality to create and maintain the business insurance registry without providing funding and the stated imposition of an administrative fee on municipal businesses equates to a tax. Moreover, using summary judicial proceedings to impose fines for noncompliance fails to recognize the costs to monitor compliance along with the inefficiencies and excessive expense when a municipality must engage counsel to seek the adjudication of disputes to collect the penalties. The Boroughs conclude the Act’s “funding sources are completely illusory.”

A videoconference hearing before the Council was held on April 28, 2023. By agreement of counsel for the parties, allowed the recorded video proceeding to be reviewed by those Council members unable to participate during that hearing. Following deliberations, the Council voted unanimously, with one abstention, to grant the State’s motion for summary dismissal.

Discussion

Council review of this matter is guided by a December 7, 1995 constitutional amendment, which states:

any provision of law enacted on or after July 1, 1996, and with respect to any rule or regulation issued pursuant to law originally adopted after July 1, 1996, except as otherwise provided herein, any provision of such law, or of such rule or regulation issued pursuant to a law, which is determined in accordance with this paragraph to be an unfunded mandate upon . . . municipalities . . . because it does not authorize resources, other than the property tax, to offset the

direct expenditures required for the implementation of the law or rule or regulation, shall, upon such determination cease to be mandatory in its effect and expire.

[N.J. Const. art. VIII, § 2, ¶ 5(a)].

An unconstitutional, “unfunded mandate” exists when: (1) the law imposes a “mandate” on a unit of local government; (2) direct expenditures are required for the implementation of the law's requirements; and (3) the law fails to authorize resources, other than the property tax, to offset the additional direct expenditures on the unit of local government. See In re Ocean Twp. (Monmouth Cnty.) & Frankford Twp., COLM No. 0010-01 (August 2, 2002), available at <http://www.state.nj.us/localmandates/decisions>.

The Local Mandates Act, N.J.S.A. 52:13H-1 to -22, created the Council to resolve disputes regarding whether a law, rule, or regulation issued pursuant to a law constitutes an unfunded mandate. See N.J.S.A. 52:13H-12. The Council’s charge is to evaluate whether a challenged rule, regulation, or statutory provision constitutes an unfunded mandate upon the claimant municipality. In re Highland Park Bd. of Educ. & Highland Park, COLM No. 0008-02 (January 31, 2003), available at <http://www.state.nj.us/localmandates/decisions>. (quoting N.J.S.A. 52:13H-12). This safeguard aligns with the constitutional provisions and Local Mandates Act, which are specifically designed “to prevent the State government from requiring units of local government to implement additional or expanded activities without providing funding for those activities.” See N.J.S.A. 52:13H-1(b).

The Council does not address the merits of a subject mandate and generally, does not assess whether “funding of any statute or any rule or regulation is adequate.” N.J.S.A. 52:13H-12(a). Thus, Council rulings “shall be restricted to the specific provision of a law . . . which constitutes an unfunded mandate and shall, as far as possible, leave intact the remainder of a statute”

Ibid. Importantly, if the Council determines a newly enacted law or any of its provisions represent an unfunded mandate, that law or provision “shall cease to be mandatory in its effect and shall expire.” Ibid.; N.J. Const. art. VIII, § 2, ¶ 5(a).

Council review of the State’s application for summary dismissal is informed by requirements for issuing summary judgment. See In re Ocean Twp. (Monmouth Cnty.) & Frankford Twp., COLM No. 0010-01 (August 2, 2002). That is, the application must be denied if “the competent evidential materials presented, when viewed in a light most favorable to the non-moving party . . . are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party.” In re Highland Park Bd. of Educ. & Highland Park, COLM No. 0008-02 (January 31, 2003), available at http://www.state.nj.us/local_mandates/decisions (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)). When reviewing an application to dismiss, the Council recognizes its rulings are not subject to judicial review, so it proceeds with “great caution.” Ibid.

Adhering to these standards of review, the Council concludes as a matter of law, the unambiguous language of the Act includes a constitutionally adequate funding resource mechanism to offset any direct expenditures incurred by implementation of the Act. Contrary to the Boroughs’ suggestion that funding is illusory, the Council concludes the plain language of the Act authorizes each municipality to establish by ordinance a reasonable administrative fee to create and maintain the insurance registry. The fees are paid by subject business owners. Also, the Act enables municipalities to seek enforcement, through provisions authorizing judicial imposition of penalties – no less than \$500 nor more than \$5,000 – upon a finding of a subject owner’s noncompliance. N.J.S.A. 10A:40A-2(b). Although municipalities are required to review and maintain the insurance certificates submitted by the subject business owners, and to provide some

form of municipal certificate of registration, the manner of implementation and the amount of the fee are not mandated. Rather, the Act delegates to each municipality the right to use a system best tailored to its specific needs and, accordingly, fix the reasonable administrative costs incurred to do so. Moreover, the Act's authorization permits recovery of significant penalties to enforce compliance. Thus, the plain language of the statute affords a funding source and there is no reason to conclude the Legislature authorized a fee that only offsets part, but not all of the costs a municipality incurs to comply. See Ocean Township at 11.

The Council also rejects the characterization of the administrative fee as an indirect tax imposed on municipal businesses. Challenges to similar authorized reasonable administrative fees have been rejected by the Council, which concluded reasonable administrative fees for municipal services are “not the functional equivalent of a general property tax.” Highland Park. See also Ocean Township. Here, the anticipated fees are charged in exchange for the reasonable costs of direct municipal services afforded subject business owners complying with statutory insurance obligations mandated in § 1 of the Act. The municipality confirms compliance and issues a certificate of registration. See N.J.S.A. 40A:10A-2(b). Despite the different factual circumstances of the administrative fees allowed in the Act and those considered in other Council matters, the Council concludes such distinctions do not alter the principle that the subject business owners benefit from the necessary work of municipal employees for which a reasonable fee may be required; that fee is not a tax. See Highland Park; Ocean Township.

The Council also rejects as unsupported the Boroughs' claim the Act's funding provisions are “so insufficient as to be illusory.” The Act includes not only the administrative fee, but also exacting penalties for a subject owner's noncompliance. As noted by the Council during the hearing, the penalties are several times more than the projected administrative fees, which provides

an incentive for subject business owners to comply in the first instance. In any event, the Council does determine whether the Act's funding source is adequate. See N.J.S.A. 52: 13H-12(a).

Because statutory implementation does not require a direct expenditure by a municipality there cannot be an unfunded mandate. In re Franklin Twp. Bd. of Education, Highland Park Bd. of Educ. & Highland Park, COLM-0001-21, (December 13, 2021), available at <http://www.state.nj.us/localmandates/decisions>.

The State's motion is granted and the complaints are dismissed with prejudice.

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