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July 21, 2021

File No. 12160-87

VIA ELECTRONIC MAIL ONLY

The Honorable John A. Sweeney, J.S.C. (Ret.)
Chair, Council on Local Mandates
200 East Eighth Street
Florence, NJ 08518
jsweeneylaw@comcast.net

Re: In re Chapter 44 Complaints (COLM-0001-21)

Dear Judge Sweeney:

As you know, this firm represents the Franklin Township Board of Education, the Gloucester City Board of Education, and the Lower Township Elementary Board of Education (collectively, “Complainants”) in the above-referenced matter. I write regarding an issue that has arisen with respect to discovery.

Through correspondence from their counsel dated June 28, 2021 and July 9, 2021, Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (collectively, “Respondents”) have asserted legislative immunity in connection with Complainants’ discovery requests. However, all authority cited in that correspondence applies the doctrine of legislative immunity in the context of traditional civil or criminal litigation, as opposed to the review of an alleged unfunded mandate by the Council on Local Mandates (“Council”). The Council’s unique role in reviewing whether a law constitutes an unfunded mandate requires the parties to have all information regarding that law, including documents used in connection with preparation of the legislation. The fact that “rulings of the council ... shall not be subject to judicial review” further demonstrates the inapplicability of traditional civil litigation practices, including the doctrine of legislative immunity, to proceedings before the Council. N.J.S.A. 52:13H-18 (emphasis added).

Moreover, the Rules of Procedure for the Council specifically state that “[a] party may request discovery from another party on motion to the Council and for good cause shown” and “[t]he Council in its discretion may require any party to submit additional information.” Rule 12(b)-(c) (emphasis added).

COUNSEL WHEN IT MATTERS.SM

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You will recall that the letter brief Respondents submitted opposing Complainants' request for injunctive relief included the certification of Anthony Cimino, Executive Director of the New Jersey General Assembly Majority, who discussed the "experts, professionals, consultants, and actuaries that have been engaged to advise the Legislature." The certification of Kevin Drennan, Executive Director of the New Jersey General Senate Majority, also discussed those experts and included a letter from three consultants from Milliman, who conducted an analysis in April of 2020, prior to when the initial approved language of Chapter 44 was agreed upon.

Because Respondents continue to assert legislative immunity in an attempt to circumvent Complainants' valid discovery requests, Complainants seek an Order from the Council requiring Respondents to submit substantive responses to same, pursuant to Rule 12.

Very truly yours,

/s/ William C. Morlok

WILLIAM C. MORLOK

EAS

cc: Jaclyn Frey, Deputy Attorney General (via email)
Leon Sokol, Esquire (via email)
Shawn Slaughter, Council on Local Mandates (via email)