



State of New Jersey
COUNCIL ON LOCAL MANDATES
140 EAST FRONT STREET
TRENTON, NJ
(609) 984-9738
(609) 984-9737 FAX

Hon. John A. Sweeney, AJSC (ret.)
Chair

Mailing Address:
PO Box 627
Trenton, NJ 08625-0627

August 17, 2021

State of New Jersey

Council On Local Mandates

Trenton, New Jersey

In re Complaint Filed by the

Franklin Twp. Board of Education

Regarding P.L. 2020, Chapter 44

STATE OF NEW JERSEY

COUNCIL ON LOCAL MANDATES

COLM-0001-21

CONSOLIDATED ACTIONS

In re Complaint Filed by the

Gloucester City Board of Education

Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the

Lower Twp. Elementary Board of

Education Regarding P.L. 2020, Chapter 44

MEMORANDUM DECISION

Complainants have filed a Motion to Compel Discovery. Co-respondents (Presiding Officers) argue that the documents sought are subject to complete legislative immunity from discovery “in civil and criminal litigation and other official proceedings pursuant to Article IV, section 9, paragraph 4, of the

New Jersey Constitution”, commonly known as the “Speech and Debate clause.” They contend further that the documents previously produced are “public” documents, readily available on the Legislative website and, thus, are not the subject of “waiver.”

For the following reasons, the motion is denied and the Council takes the unusual, but necessary, step of revoking the standing of the Presiding Officers as “Parties” in this matter. We, therefore, find it unnecessary and imprudent to attempt to decide the constitutional issues involving “immunity” and “waiver.” We find that those legal issues are better left to the courts, our function being constitutionally limited to determining whether the legislation at issue in this matter constitutes an unfunded mandate.

Co-respondents filed an Appearance in this matter on March 29, 2021 pursuant to Council’s Publication Notice which directed the Attorney General to file an Answer to the Complaint. The Notice also provided that “any other official served with the Complaint that chose to do so might file an Answer, as Respondent”. The matter then proceeded along the usual path with the Chairman of the Council managing the matter until the Motion to Compel Discovery was filed and the issues of “immunity and “waiver” were raised. It was at this point in the proceeding that Chairman Sweeney first realized that he had failed to consider the question of whether public officials responsible for appointing members to the Council should be permitted to appear in the matter as “parties” (See Rule 4 of the Rules of Procedure.). The issue was then put before the entire membership of the Council. We now conclude that to allow the “Presiding Officers” to participate in any manner would create an actual or potential conflict, thereby forcing the appointees of the “Presiding Officers” on the Council to recuse themselves or be subjected to a Motion to Disqualify. We decline to enforce the Notice as written to permit such a result that is so patently unfair. We specifically delete that portion of the Notice that allows any other official served with the complaint to automatically file an Answer or enter an Appearance, and we direct that the Notice be rewritten to provide that such official must seek permission to do so by formal Motion. The interests of the “presiding officers”, as legislators, is more than adequately represented, as it has been in every other case that has come before us, by the Office of the Attorney General.

Counsel for Complainants shall submit an Order consistent with this decision.

Council member, Jack Tarditi, has recused himself for reasons other than those stated in this decision. The remainder of the Council Members were unanimous.



John A. Sweeney, AJSC (Ret.)

Chair