

IMPORTANT LEGAL ISSUES FACING NEW JERSEY LOCAL GOVERNMENTS

By

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It is challenging to identify the ten most significant legal issues New Jersey municipal government today, because there are so many issues that impact on the delivery of services by municipalities. However, certain issues seem to appear again and again in the queries directed to the League of Municipalities and the following issues are high on the League's priority list.

(1) PROPERTY TAX RELIEF

By far, the most important issue involves providing a fair basis for the funding of local government services that does not depend on property tax. It is a truism that the level of government closest to the citizens is the most responsive, and is called upon to provide the services most in demand, whether that is police and fire services, recreation programming, trash collection, land use management or any of the other factors that comprise the "quality of life" that is so important to our citizens. Sadly, local governments and schools are dependent on the most regressive tax ever devised. The local property tax is the highest in the nation and is particularly harmful to those on fixed incomes and least able to pay.

While property tax reform is necessary, that should be accomplished in a manner that respects the decisions of citizens to live in one municipality or another because of the uniqueness that each municipality offers to its citizens.

(2) MAKING IT EASIER FOR MUNICIPALITIES TO SHARE SERVICES

Most municipalities have sought to economize by engaging in shared services with other municipalities and with their school districts and with county governments in the area of bulk purchasing, shared equipment, joint insurance funds, mutual aid agreements for fire and police responses and other areas, limited only by imagination – and the hurdles confronted by legal requirements. Some shared services come up against the legal restrictions on purchasing, with different legal requirements for municipalities, school districts, counties and the State. Other legal issues arise that limit the sharing of personnel due to issues of command, supervision, compensation levels, civil service regulations, etc. Legislation to simplify the shared service process needs to be enacted to make it easier for governmental units to share services. The State also needs to expand its support for shared services studies and for financial incentives that will make shared services attractive and fair to all of the participating municipalities.

(3) THE NEGOTIATION AND ARBITRATION OF FIRE AND POLICE CONTRACTS

Negotiation and Arbitration of Fire and Police Contracts have long been a matter of concern. Those contracts have regularly increased at rates above the cost of living and then those contracts form the basis for the contract demands of other employees. The result is that the payroll costs for local governments constitute the largest element of the municipal budget and constrain the provision of other services.

(4) ETHICS IN GOVERNMENT

It is evident that some officials at every level of government have failed to meet their ethical and legal obligations as public officials. While criminal prosecution of those who have transgressed is appropriate, so also is the need to unify the legal standards.

The Local Government Ethics Law was adopted in 1991, but the original proposals were for a comprehensive Ethics Law that would apply at all levels of government. What ensued, however, was a debate over whether the same standards should apply to all government officials. The result was a hodgepodge of laws with similar but different standards for local governments, for school districts, for the legislature and for the Executive Branch of State Government. The League has regularly provided training programs for local officials with a strong emphasis on ethical standards, but those training programs are voluntary.

(5) PAY-TO-PLAY AND LOCAL ELECTIONS

While there has been legislation to address pay-to-play issues and the legislature finally acted to permit local ordinances on the subject, there is vast confusion over what applies and the necessary documentation that is required for compliance by vendors and elected officials. The issue is also impacted by the increasing costs of political campaigns and the limited funding available for those campaigns. At the local level contributions are scarce, but the costs of getting out just one or two mailings is intimidating for candidates who do not have the personal resources to fund their own campaigns. The issues are complex, but if they are not addressed fairly, the result will be that only those with personal financial resources will be able to run for elective office.

(6) THE REGULATORY PROCESS

State Agency regulations and “interpretations” that impose requirements on local governments without legislative action, and without public dialogues and debate are a continuing issue. When new laws are enacted by the Legislature, there is an opportunity to have a public debate over the merits of the legislation. To a more limited extent, there is an opportunity to submit comments on formally proposed regulations.

The use of “interpretations” and “advisories” have an impact that can be costly for local government, but have no public debate on the merits or even whether they are consistent with the laws enacted by the Legislature. It is a constant process to monitor those notices and bulletins and to have to react after they are issued and in effect.

(7) THE IMPACT OF TECHNOLOGY

Technology today is changing the way that we communicate and the way that we function. The ease and apparent informality of email can lull people into feeling like they are having a casual conversation while they are using it. However, in reality, when a public official uses email to discuss municipal matters, that person is producing a public record, just as though he or she were writing a hard copy letter, memo, or other document. How those e-mails are transmitted and then preserved is an increasing challenge. Often those e-mails are sent from and to personal computers. They could be from a citizen to an elected official or to an appointed Planning Board or Zoning Board member commenting on a pending application. We cannot put the genie back in the bottle and those e-mails will become ever more frequent, but we need to develop standards so that the discussion is part of the public record, and is known to both the public and the applicant. We also need to recognize that public officials retain a certain measure of privacy and free speech and that not every communication is part of the public record, especially when ideas are being tentatively explored. We have to avoid situations where e-mail communications become a substitute for the public meetings and discussions. To accomplish that, we have to develop new rules that recognize the change from paper-based files to electronic records and messages. That will require funding to allow local governments to obtain the necessary technology and the training for those who are charged with maintaining the records.

(8) DEALING WITH THE FEDERAL GOVERNMENT

Another important issue is the ongoing problem of Federal Legislation that micro-manages local government, especially in the area of land use regulations, such as the exemptions provided to rail carriers, and waste companies posing as rail carriers, from local zoning requirements. More and more frequently waste companies are posing as rail carriers so that they can claim immunity from State and local environmental and zoning laws, thus ignoring the environmental concerns of the area and the safety and welfare of the community. This is fast becoming a threat to residents across New Jersey as well as around the country. Unfortunately, the lobbying power of large businesses and interest groups in Congress far outweighs the ability of local governments to be heard and considered. Some members of Congress want to micro-manage government at all levels, with the result that laws are adopted that impact on the placement of cell towers, land use exemptions for airports, railroads and others. The Federal government is the most remote from the citizens of our municipalities and is the least able to fairly deal with what should be local issues impacting the quality of life in our communities.

(9) PRESERVING THE QUALITY OF LIFE IN OUR MUNICIPALITIES

Economic development and redevelopment, farmland preservation, public safety and “quality of life” issues in municipalities are difficult to achieve with legislation and regulations that seek to impose a “one size fits all” approach to local government. Not every municipality is identical and citizens choose to live in particular municipalities for a variety of unique local reasons. Efforts to impose uniformity on municipalities or to force consolidation contrary to the wishes of the citizens of those municipalities is an affront to

those citizens. What is appropriate for highly developed municipalities in the Northeast portion of the State may be very inappropriate for those in the Northwest and Southern portions of the State.

(10) THE PROTECTION OF THE MUNICIPAL TAX LIEN AND TAX SALE PROCESS

A recurring issue being litigated in the Federal and New Jersey courts of is the tax lien, foreclosure, and sale process as provided for in the Tax Sale Act. A recent United States Supreme Court Case found that the notice given to the delinquent taxpayer in a foreclosure situation under Arkansas law was insufficient, when certified mail alone was used. In New Jersey Court Rule 4:64-7(c) requires that service be made both by certified mail and by ordinary mail. However, if the certified mail and ordinary mail indicates that the assessed owner no longer resides at the address, the United States Supreme Court decision suggests that a municipality would have to take a step further to provide notice. Recent New Jersey cases have focused on the detail of the notice that needs to be given with regard to the amount required for redemption, as well as other issues. The result is that a previously settled procedure has become unsettled as the result of litigation rather than through a legislative process.