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April 20, 2018

- I. State Issues
- II. Federal Issues
- III. League Conference Follow-up
- IV. Also of Interest

I. State Issues

a. Immediate Action Needed: Bill to Transfer of PFRS to a Labor-Management Board on Governor's Desk

Your immediate assistance is needed. As we previously reported, [S-5/A-3671](#), which transfers the management of Police and Fire Retirement System (PFRS) to a Board of Trustees of PFRS with majority labor control, now awaits action by the Governor. Governor Murphy has until on or about May 10 to act on this bill. It is imperative that the Governor's office hear from local officials on this very concerning proposal.

Please either call the Governor at 609-292-6000 or your contact in the Governor's IGA office to express opposition to this bill until it is amended to add the necessary safeguards advocated by the League, the Conference of Mayors (NJCM), and the Association of Counties (NJAC).

For more information please see our [March 29 alert](#).

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b. Governor Signs Bill Expanding Voter Registration

On April 17, Governor Murphy signed into law [A-2014](#), which requires the New Jersey Motor Vehicle Commission (MVC) to automatically register to vote any person who is eligible to vote, or to automatically update a person's voter registration, as part of the process of applying for a driver's license, an examination permit, a probationary driver's license, or a non-driver identification card, unless the applicant specifically declines the automatic voter registration. MVC must provide notice to applicants that they will be automatically registered to vote, unless they decline, and the penalties for false registration and illegal voting. MVC is required to ensure that all the information necessary for voter registration is collected and promptly electronically transmitted to the Secretary of State. In addition, it permits any other state agency that collects proof of voter eligibility, including age, citizenship, and residence address, to implement automatic voter registration, upon Secretary of State approval, for eligible individuals. P.L. 2017, c. 6 will take effect November 1, 2018; however, MVC is permitted to take any necessary anticipatory administrative action for implementation of the law.

Contact: Lori Buckelew, Senior Legislative Analyst, lbuckelew@njslom.org, 609-695-3481, x112

c. Chief Justice Memorandum Regarding Fine and Penalties in Municipal Court

Earlier this week, Chief Justice Rabner issued a [Memorandum](#) regarding fines and penalties in municipal court. The Memorandum briefly discusses recent examples of municipal court judges acting inappropriately when dealing with the collection and issuance of fines and penalties. It then continues to express the importance of municipal court judges carrying out their duties for the sake of justice and without any link to a town's need for revenue.

While we agree with the Chief Justice's conclusion that all judicial matters should focus solely on implementing justice, we respectfully disagree with any notion that these are more than a rare few isolated instances. We look forward to reviewing the finalized report from the Committee on Municipal Court Operations, Fines and Fees, which as indicated in the Memorandum, will be made public soon and will advise accordingly.

Contact: Frank Marshall, Esq., League Staff Attorney, FMarshall@njslom.org or 609-695-3481, x137

d. NJ Court Reviews Religious Aid Clause

On Wednesday, the NJ Supreme Court issued its decision in [Freedom From Religion Foundation v. Morris County Board of Chosen Freeholders](#), a case that dealt with a Morris County grant program that provided historic preservation funding to religious institutions, among other recipients. In overturning the lower court's decision, the Supreme Court ruled that the county's program, which was funded through taxpayers' dollars, violated the Religious Aid Clause of the State Constitution.

The Religious Aid Clause protects residents from being, "obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minster or ministry..." The Court ruled that a plain reading of

the Clause prohibited any taxpayer funds from going to the building or repair of religious institutions which the County's grant program clearly did. Additionally, there was no exception to the Religious Aid Clause for the purposes of historic preservation. Additionally, churches who were also parties to the suit argued that precluding religious organizations from being eligible for grant funding would violate their own rights under Federal Constitution's, Free Exercise Clause. Unpersuaded by this argument, the Court ruled that neither the Religious Aid Clause itself nor its application under the circumstances at hand violated the Federal Constitution. The Court reached this decision despite the recent Supreme Court of the United States' (SCOTUS) ruling in *Trinity Lutheran Church of Columbia v. Comer*. In *Trinity*, SCOTUS determined that a grant program which categorically precluded religious organization from qualifying for funding to update playgrounds was in violation of the Free Exercise Clause of the U.S. Constitution.

In harmonizing its own decision with the recent SCOTUS opinion, the Court drew a distinction between the facts at hand and those in *Trinity*. The Court found that the two cases, while similar, were not totally analogous. *Trinity* involved excluding a religious institution from a general, secular benefit (funds to resurface playgrounds) because of who they were. Whereas, in the case at hand, the County was providing taxpayer funds which were being used to further a religious purpose, repairing buildings so that religious services could be held. Because precluding churches from the counties program was a limitation on **how** taxpayer funds could be used and not **who** could receive the funds, the Court reasoned that the Free Exercise clause was not violated.

Municipalities should be aware of this ruling as it could impact the administration of their own grant programs. You should review this ruling with your municipal attorney for further information on how it may impact you.

Contact: Frank Marshall, Esq., League Staff Attorney, FMarshall@njslom.org or 609-695-3481, x137

II. Federal Issues

a. Court Rules Against Preferential Federal COPS Funding Policy

Last week, a Federal Judge in California issued a nation-wide injunction, banning a U.S. Department of Justice (DOJ) policy meant to ensure local cooperation with Federal immigrant deportation efforts. When applying for Federal Community Oriented Policing Services (COPS) grants, the policy gave preference to police departments, which served municipalities that had agreed to provide Immigration and Customs Enforcement (ICE) with information regarding possible illegal immigrants who had been arrested or detained.

Under the DOJ policy instituted last year, when scoring applications for COPS funding, additional points were awarded to police departments that alerted ICE agents, at least 48 hours before release, that they had detained individuals believed to be in the country illegally. Further, ICE agents would be allowed access to jail facilities, so they could interview inmates and review records, prior to release.

The suit was brought against DOJ by the City of Los Angeles, which refused to abide by the new rules. Last year, the City was not awarded any COPS funding, while 80% of the departments that did receive money cooperated with ICE.

In his ruling, U.S. District Judge Manuel Real found that tying funds to cooperation with ICE was an improper attempt to force local police to participate in immigration enforcement, which is the job of the federal government. The move, he wrote, “upset the constitutional balance between state and federal power by requiring state and local law enforcement to partner with federal authorities.”

The DOJ is expected to appeal this decision.

Judge Real is currently the longest serving Federal Judge and the only remaining jurist who was appointed to the bench by President Lyndon Johnson.

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b. FAA Reauthorization Bill Introduced

Late last week, leaders of the House Transportation and Infrastructure Committee introduced the bipartisan Federal Aviation Administration (FAA) Reauthorization Act of 2018 (H.R. 4), a five-year bill to reauthorize the programs of the FAA, provide long-term stability for the Nation’s aviation community, continue investment in U.S. airports, and make necessary reforms to improve American competitiveness and safety in aviation.

This bipartisan bill, sponsored by Transportation and Infrastructure Committee Chairman Bill Shuster, Transportation and Infrastructure Committee Ranking Member Peter DeFazio, Aviation Subcommittee Chairman, and New Jersey Congressman Frank LoBiondo, and Aviation Subcommittee Ranking Member Rick Larsen, is tentatively scheduled for debate on the House floor, next week.

“This FAA authorization is the culmination of years of hearings and listening sessions to solicit input from aviation stakeholders, commercial passengers, general aviation pilots and our colleagues,” said Chairman LoBiondo. “In the truest sense, this legislation represents bipartisan cooperation and compromise to advance the Nation’s aviation interests and safety in the skies. Moving a five-year FAA bill with broad bipartisan support through the Congress and to the President’s desk is my top priority as I wind down my Chairmanship of the Subcommittee.”

The bill provides a stable source of funding for airport improvement grants (including grants for small General Aviation airports), advances air traffic control reforms, gives airports greater flexibility regarding the assessment of improvement fees, and directs the FAA to conduct noise studies (and involve local communities in those studies).

H.R. 4 also includes the bipartisan Disaster Recovery Reform Act (DRRA), legislation that received overwhelming support in the House, in December, as part of an emergency disaster aid package. The DRRA provisions of the bill are designed to help communities better prepare for, respond to, recover from, and mitigate against disasters of all kinds.

The DRRA provides broad reforms to the Federal Emergency Management Agency (FEMA), in particular increasing the federal emphasis on pre-disaster planning and mitigation to reduce the potential for future loss of life and help reduce the rising costs of disasters.

In addition, this bill addresses the integration of drones into the national airspace. This includes, establishing a process to accelerate implementation of low-altitude unmanned aircraft systems (UAS) traffic management (UTM) system, expediting safe deployment of commercial UAS by creating a risk-based permitting process, and requires the DOT to study privacy implications of UAS operations.

Most importantly, H.R. 4 directs the DOT to study the potential roles of state and local governments in the regulation of low altitude UAS, including studying the financing option related to the regulation and oversight of UAS.

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c. SCOTUS Hears Arguments on Internet Sales Tax Case

On Monday, the U.S. Supreme Court (SCOTUS) heard oral arguments in the case of [South Dakota v. Wayfair Inc.](#), a case we have previously written about, [here](#). In short, this case reviews a state's ability to require online retailers to collect sales tax. Under the current law, states can only require internet retailers to collect sales tax if that retailer has a physical presence within the state.

States argue that a physical presence requirement which worked well before the internet is now untenable and is causing hundreds of millions of dollars in sales tax revenue to go uncollected. They also argue that a different scheme to require collections of sales tax would put brick-and-mortar stores, who must collect the tax, on a level playing field with their online competitors. For New Jersey, an increase in sales tax revenue would mean more funding for property tax relief.

The Court does not provide a date for when they will issue their decisions but on average a written opinion is issued three months after oral arguments. However, because of the importance of this case it is expected that it will take a bit longer for the Court to issue a ruling. We will be sure to update our members on any updates.

Contact: Frank Marshall, Esq., League Staff Attorney, FMarshall@njslom.org or 609-695-3481, x.137

III. League Conference Follow- Up

a. Claim Your CEUs from the Annual Conference

Attention Municipal Officials! Do Not Forget to Claim Your CEUs from the 2017 NJLM Annual Conference! Please click on the following link to claim your credits:
<http://www.njslom.org/339/Continuing-Education-Unit-CEU-Tracking-S>

b. Exhibits at the Annual Conference

Do you know a vendor that would be a good fit for the Annual Conference? If so, ask them about being an exhibitor or have them contact Kristin Lawrence, Exhibit Manager at 609-695-3481, x125 or klawrence@njslom.org. Information is also available on njslom.org/exhibit

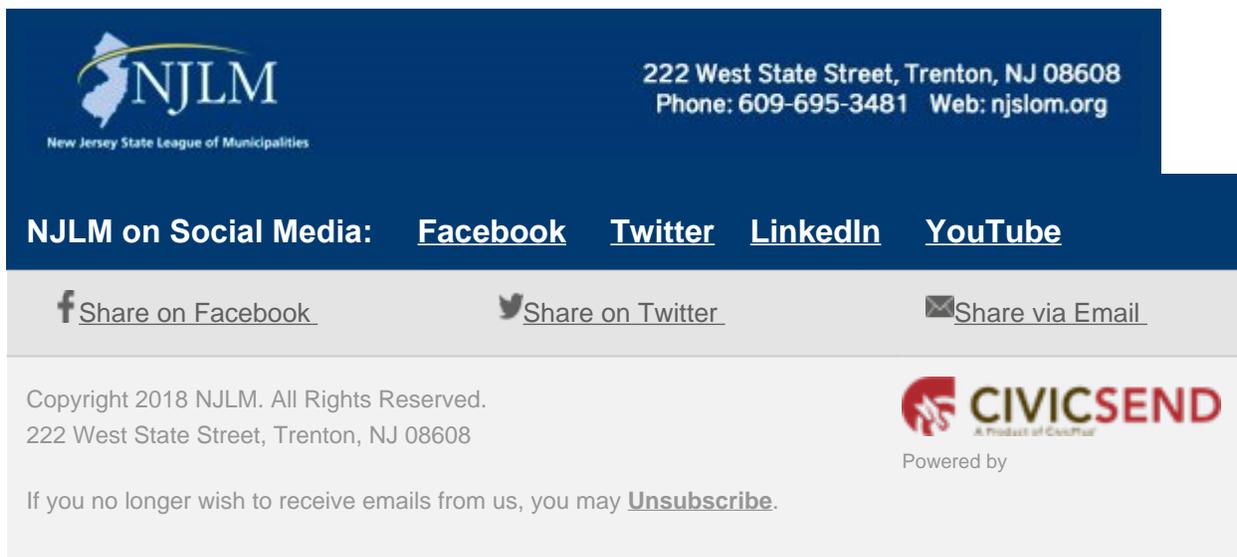
IV. Also of Interest

a. League New Website Announcement

In case you missed it, the League recently launched a completely redesigned website; a project NJLM staff has been working on for nine months. Our web address remains the same, www.njslom.org, but the site has a completely different look and interface, which will improve user convenience. Some of the many new features of the site include:

- Subscription options for tailored alerts (for instance, users can subscribe to receive alerts when the job/RFP page is updated, or to receive emails each time a seminar is added to the seminar calendar). [Click here](#) to subscribe to alerts.
- Improved and responsive search function.
- A rotating photo banner atop each webpage: with photos highlighting the state's many great features and locations, and currently featuring our recent Show Off Your City contest winner Verona Township!
- A site map and quick links to aid site navigation.

We hope that the new site improves your experience navigating the League's website!



The footer banner features the NJLM logo on the left, contact information on the right, social media links in the center, and a CivicSend logo on the bottom right. The background is dark blue with white text.

 **NJLM**
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