

IN THE MATTER OF A COMPLAINT FILED BY THE TOWNSHIP OF BRANCBURG

MEMORANDUM DECISION AND ORDER

On July 30, 2010, the Township of Branchburg (Somerset County) filed a Complaint with the Council on Local Mandates seeking a determination that the court's holding in the case *Smith v. Hudson County Register*, 411 N.J. Super. 538, (App. Div. 2009) imposes unfunded mandates, namely, insufficient fees for the copying of public documents requested pursuant to the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-a to -13. We have concluded that it is prudent to decide this matter on the narrowest possible grounds.

The Township filed its complaint on a form provided by the office of the Council on Local Mandates. Paragraph 1 of that form states in its pre-printed portion that "Claimant alleges that the following statute, rule or regulation is an unfunded mandate in violation of the New Jersey Constitution, article VIII, sec. 2, p. 5 and N.J.S.A. 52:13 H-2, because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for its implementation." (emphasis added). In the blank space provided for the claimant's response, the Township identified "Smith v. Hudson County Register" as the subject of its complaint. The Township did not enter a citation for a "statute, rule, or regulation" as required by the Constitution. The case referred to in the complaint is a decision of the Appellate Division of the Superior Court essentially determining that section 5(b) of OPRA requires that public agencies that are subject to the Act charge members of the public the "actual cost" to duplicate public records "which shall not include the cost of labor or other overhead expenses" unless the "actual cost" can be shown to exceed the per-page costs detailed in the same section of the Act.

Although we believe that we have concurrent jurisdiction with the Superior Court to hear and decide issues such as those presented in *Smith, supra*, we determine that the Complaint must be dismissed because it fails to place the statute squarely before us as the Constitution requires.

Although there is currently on the Governor's desk Assembly Bill 559, the subject matter of which is OPRA copying fees, we decline to speculate on the validity of the proposed law because such action would constitute an advisory opinion.

The Complaint is, therefore, DISMISSED.

Council Members Jack Tarditi, John A. Sweeney, Janet L. Whitman, Leanna Brown, Victor R. McDonald, III, Rita Papaleo and Ryan J. Peene join in this opinion.