

CA - Dunellen

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Trial Brief? Additional Representation of Fact

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BRIEF

ADDITIONAL REPRESENTATION OF FACT

It appears that the Borough of Dunellen was released in this case unconditionally from the strictures of the Mt. Laurel decision. There now has arisen in the mind of the court a question as to whether or not it has the power under the Plaintiff's Complaint to order Dunellen to seek Federal or State funding to re-habilitate housing.

Counsel would like to call the courts' attention to the fact that whatever testimony there was in the case related to dilapidated housing came from witnesses who testified that their source material was from the 1970 census material. It was pointed out to the court during the trial by Dunellen's counsel that the census bureau did not survey dilapidated housing in towns under 10,000 people. Several times during the trial the Court made rulings supporting that position so that testimony relating to dilapidated housing was not binding on Dunellen. The Court's attention is called to the fact that Dunellen has a population of approximately 7,000.

Counsel argues that in this case there was no proof that Dunellen had dilapidated housing. Counsel will also be candid with the court and acknowledge that every town has some older buildings that need re-habilitation. It is within this frame of reference that I continue my argument here. The question which all counsel for the Defendants are raising is whether or not the Court has the power to mandate local legislature to do something it is contended is largely legislative

in nature. It is a general principle of law that the selection of the means to promote the general welfare is a legislative function and one that is not open to arbitrary interference or review for the Judiciary. See Inganamort v. Borough of Fort Lee 120 Super 286; affirmed 62 NJ 521.

Application is made here to the court of equity to mandate a municipality to secure federal and State funding. This is fine as long as there is ample money in either the State or Federal budget for such programs and where there is no effect on the towns pocketbook. But I am sure the court understands that many times a federal or State program once started does not continue; instead, a cutback and then the requirement on the part of the municipality to make up the additional funding. At that point, the Court would then be stating the townspeople to put "X" number of dollars into their budget for a particular program to the detriment of some other local services, such as police or fire, etc.

Several of the defense counsel have made inquiry as to whether or not there are any funds for the Section 8 program or Section 12 program, both of which were mentioned by the Plaintiffs in their case. It is my understanding that there are no funds available under either of these programs. Accordingly, the court of equity should not exercise its power where it would not be able to fully and freely exercise its power in the future.

I am sure by now the court is aware of Governor Byrne's executive Order issued on 4/2/76, relating to the subject matter of the question at hand. The Governor's executive Order was

explicit as to means. Prior to April 2, 1976, there had been no legislative or executive action in this area. Now that there is, any action by the Court would be looked upon as a judgment on the legislative or executive action. Neither the executive or the legislative is before the court; so, therefore, the wisdom of the executive Order should not be met where the parties to that Order are not before the court.

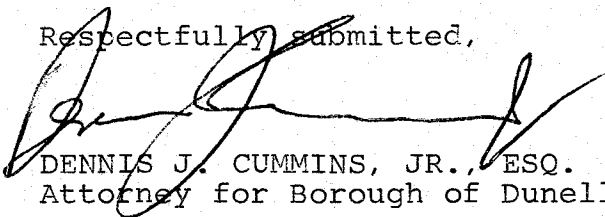
DUNELLEN Is In The Process Of Adopting A Remedy:

The Court's attention is called to the fact that the County of Middlesex may be receiving additional money for the rehabilitation of housing. Dunellen has already make application to share in as much proceeds as will be allowed to the County. It is taking steps to join in a program of up-grading its' housing for all people. It's continued voluntary participation should be encouraged. There is no need for a Court Order that might not have a time limit.

CONCLUSION

It is respectfully requested on behalf of the Borough of Dunellen that the unconditional dismissal remain just that, unconditional. Dunellen wishes further to say it joins in the brief and argument submitted by Mr. Spritzer on behalf of it on the same issues.

Respectfully submitted,

  
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