

~~100~~ (Highland Park)

9-10-74

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- Letter ^{to clerk} re. NOM & brief
- w/brief
(no NOM)

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FRANK J. RUBIN
LAWRENCE LERNER

BOOK _____ PAGE _____
FRANK SCHATZMAN
CLERK

September 10, 1974

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Clerk of Superior Court
State House Annex
Trenton, New Jersey

Re: Urban League of Greater New Brunswick,
etc., et als., v. The Mayor and Council
of the Borough of Carteret, et als.
Docket No. C-4122-73

Dear Sir:

Enclosed please find original of Notice of Motion returnable September 20, 1974, and accompanying Brief in Support of Notice of Motion on Behalf of Mayor and Council of Borough of Highland Park. Also enclosed is original and copy of answer in the above matter for filing.

I certify that copies of the above Notice of Motion and accompanying Brief have been sent to the Clerk of Middlesex County and to David H. Ben-Asher, Esq., attorney for plaintiffs, and to the attorneys of all of the co-defendants.

Also, copies of the Answer were sent to David H. Ben-Asher and to the attorneys of all of the co-defendants this day.

Very truly yours,

LAWRENCE LERNER

LL:jf
encs.

c.c. Clerk of Middlesex County
David H. Ben-Asher, Esq.
All attorneys of co-defendants

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FRANK SCHATZMAN
CLERK

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ATTORNEYS FOR

DEFENDANT BOROUGH OF HIGHLAND PARK SUPERIOR COURT OF NEW JERSEY

Plaintiff

URBAN LEAGUE OF GREATER NEW BRUNSWICK,
etc., et als.

vs.

Defendant

THE MAYOR AND COUNCIL OF THE BOROUGH
OF CARTERET, et als.

CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No. C-4122-73

CIVIL ACTION

BRIEF IN SUPPORT OF NOTICE OF MOTION ON BEHALF OF THE MAYOR AND
COUNCIL OF THE BOROUGH OF HIGHLAND PARK

Lawrence Lerner
On the Brief

Municipalities (Municipal Corporations) are creatures of the State legislature; municipalities can neither be created or extinguished without action of the State legislature.

Attention is directed to NJSA 40:55-30 which concerns "zoning." Said section provides:

Any municipality may by ordinance, limit and restrict to specified districts and may regulate therein, buildings and structures according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority, subject to the provisions of this article, shall be deemed to be within the police power of the State. Such ordinance shall be adopted by the governing body of such municipality, as hereinafter provided, except in cities having a board of public works, and in such cities shall be adopted by said board.

The authority conferred by this article shall include the right to regulate and restrict the height, number of stories, and sizes of buildings, and other structures, the percentage of lot that may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the location and use and extent of use of buildings and structures and land for trade, industry, residence, or other purposes.

(At page 513.)

The power of the municipality, the creature of the State, to zone is predicated necessarily upon a grant of power from the State, said grant being NJSA 40:55-30.

It is submitted that defendant Highland Park's Motion to Dismiss pursuant to Court Rule 4:6-2(e): "Failure to State a Claim Upon Which Relief Can Be Granted" should be granted

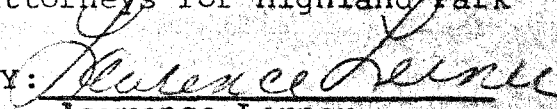
since the relief sought by the plaintiff is political in nature, which makes this issue non-justiciable, rather than judicial in nature.

Defendant Highland Park relies upon the doctrine of Yates v. Kelly, 113 N.J. Super. 533 (1971), to support its political question base. In the Yates case, the court declared at Page 540: "The creation or re-creation of Senate and Assembly Districts is a legislative function; it is not for the courts to undertake."

It is submitted that the creation and re-creation of municipalities, even moreso than Senate and Assembly Districts, "is a legislative function; it is not for the courts to undertake." It is further submitted that a necessary corollary to the power to create and extinguish municipalities is the power to invest or divest such municipalities with enumerated powers. The powers enumerated in NJSA 40:55-30 are powers conferred by the State on municipalities, giving credence to the relief being requested by plaintiff is to interfere in a political controversy. It is submitted, therefore, that the Political Question Doctrine should be found by the court to exist in this case, thereby rendering the matter non-justiciable.

There, defendant Highland Park seeks dismissal of the complaint on the grounds that plaintiffs have failed to state a claim upon which relief can be granted.

Respectfully submitted,
RUBIN AND LERNER
Attorneys for Highland Park

BY: 
Lawrence Lerner
Member of the Firm