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- letter ^{memo} to Judge re Highland Park's opposition to plaintiff's
motion for additional relief

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FILE NO. APN9054DBR

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October 11, 1977

Honorable David D. Furman
Middlesex County Courthouse
New Brunswick, New Jersey 08903

Re: Urban League v. The Mayor and Council of the Borough
of Carteret, Docket No. C-4122-73

Dear Judge Furman:

Plaintiffs in the above matter have filed a motion for additional relief with respect to the conditionally dismissed municipalities scheduled for October 21, 1977. This office represents the Borough of Highland Park, one of those conditionally dismissed municipalities, and we submit this letter memorandum in lieu of formal brief in opposition to plaintiffs' motion.

The court's review of plaintiffs' motion papers will confirm that they seek nothing other than a reconsideration of Your Honor's prior determinations in this case. The Appellate Division, in reserving to plaintiffs the right to seek "additional relief" to effectuate the settlement reached by the parties, merely acknowledged the trial court's jurisdiction to enforce its own unstayed orders notwithstanding transfer of the proceedings to the Appellate Division. See Busch v. Busch, 91 N.J. Super. 281 (Ch. Div. 1966); Morrison v. Morrison, 93 N.J. Super. 96 (Ch. Div. 1966). Relitigation of the underlying merits of questions previously considered by the trial court was not contemplated, and would appear to be barred by R.2:9-1(a), vesting control of such proceedings in the Appellate Division as of the filing of the notice of appeal.

The doctrine of "law of the case" would seem to be applicable. Although the doctrine is more a discretionary guideline than a firm rule of law, State v. Hale, 127 N.J. Super. 407, 411 (App. Div. 1974), it does reflect the sound policy of our courts to relieve litigants of the burden of retrying matters where intervening factors have not made the previous ruling obsolete.

Honorable David D. Furman
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In the present case, the only factor arising in the interim is a spate of recently published case law which we submit further substantiates the position urged by the conditionally dismissed defendants at trial. See Pascack Assoc. v. Mayor and Council of the Tp. of Washington, _____ N.J. _____ (1977); Fobe Associates v. Mayor and Council & the Board of Adjustment of the Borough of Demarest, _____ N.J. _____ (1977). Plaintiffs have not pointed to a single circumstance, other than the strength of their belief in their own cause, which would warrant a reconsideration of this court's determination. In view of the foregoing, defendant Borough of Highland Park requests that this motion be dismissed.

Respectfully submitted,

Lawrence Lerner

LAWRENCE LERNER

DBR/apn

cc: All Attorneys