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Civil rights group seeks legal fees from towns sued in Mt. Laurel case

By KATHY BARRETT CARTER

Attorneys for the Civic League of Greater New Brunswick asked the state Supreme Court yesterday to require eight Middlesex County communities, sued in a historic 1974 Mt. Laurel case, to pay legal fees amassed during 12 years of litigation.

Barbara Stark of the Rutgers Constitutional Litigation Clinic at Rutgers Law School in Newark said well-established federal law allows for attorneys handling discrimination suits to have their legal fees paid if they win.

She said the towns do not have the "legal authority" to deny the fees.

Although the Mt. Laurel case did not specifically deal with racial discrimination, Stark said the exclusionary zoning in many communities was designed to keep poor families out and had a particularly injurious impact on blacks. The result was discriminatory even if town officials did not intend to engage in racial discrimination, she said.

Stark said that alone is enough to establish a case of discrimination entitling the Rutgers Constitutional Litigation Clinic to legal fees. She urged the justices to order a hearing for a determination of appropriate legal fees.

Attorneys on both sides of the case said they expected the legal fees, if they are awarded, to be huge because of the complexity and length of the case, but neither would offer even a ball park figure on cost.

Phillip Paley, the lawyer for Piscataway Township, who argued the case on behalf of all the municipalities, said he had been involved in another case with the clinic that ran about eight days and legal fees were $50,000.

This case lasted 35 trial days, involved 23 municipalities originally and involved appeals to the Appellate Division and the state Supreme Court, he said. Then there was remand with 20 more trial days, and individual litigation involving each of the towns, according to Paley.

8 Middlesex communities face huge costs if ordered to pay

"You're talking lots of money," Paley said.

Justice Stewart G. Pollock said the inability of the clinic's lawyer to give a dollar figure on legal fees was "particularly troublesome, at least for this member of the court."

Noting the money would come from taxpayers, Pollock said, "It just does not sound right. The fact you could not give a figure. It is very troublesome when you're dealing with public funds."

The original litigation involved 23 towns in Middlesex County but only eight—East Brunswick, Piscataway, North Brunswick, South Brunswick, Monroe, Old Bridge, South Plainfield and Cranbury—remain in the case. The other cases were settled or referred to another state agency for resolution.

Stark said liability for the legal fees should be shared among the eight towns. Paley suggested that if any legal fees are paid they should be split among all 23 of the original towns involved.

Stark maintained that the clinic, a public interest law firm, is entitled to legal expenses for representing the Civic League because the towns, which were found to have unconstitutional zoning patterns, violated the federal Fair Housing Act of 1968.

But Paley said it was "terribly unfair" to expect towns like Piscataway to pay when it is clear that virtually every suburban community in the state had similar zoning patterns and have been found to have "some Mt. Laurel obligation. Why put the entire burden on the taxpayers of Piscataway?"

In addition, Paley said the Mt. Laurel court ruling did not conclude that the towns had been guilty of racial discrimination, although he conceded that the zoning patterns had a more adverse impact on blacks.

"Proof that zoning ordinances did not permit a fair share of low-income families is not the same as proof that the municipality was guilty of racial discrimination," Paley said.

Paley said the zoning ordinances in place in these municipalities were "completely legal until Mt. Laurel."

In its historic Mt. Laurel court ruling, the New Jersey Supreme Court declared unconstitutional exclusionary zoning laws like those requiring five acres for a single-family home. It said that every developing town should zone for its "fair share" of low- and moderate-income housing. The aim was to force all communities to have a mixture of single-family and multi-family dwellings. Later court rulings extended the concept to all towns, not just the developing ones.

Stephen Isdorfer of the Public Advocate's Office, who argued in support of giving the clinic legal fees, said many towns are not voluntarily adopting fair housing plans because they do not have to worry about being sued.

John Payne, another attorney from the litigation clinic, said requiring payment of legal fees will give groups the incentive to bring litigation.

"The Urban Leagues and NAACP don't have the resources to hire attorneys to go out and try these cases," Payne said.