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State League of Municipalities Ruled a Public Agency, Subject to OPRA

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The State League of Municipalities — the powerful lobbying arm of New Jersey's 566 local governments — is a public agency whose records are subject to disclosure, a unanimous state Supreme Court ruled on Tuesday.

The Court said that the League is an "instrumentality" created by "political subdivisions," and therefore satisfies the definition of a public agency under the Open Public Records Act, N.J.S.A. 47:1A-1 to 13.

OPRA's plain language places the league "squarely within the term 'public agency,'" wrote Justice [Barry Albin](#) in [Fair Share Housing Center v. N.J. State League of Municipalities](#), A-36-10.

The league receives 16 percent of its funding from taxpayer dollars, every municipality in the state is a member, its staffers are enrolled in the state pension system and its officers are all municipal officials, he said.

Albin cited a legal opinion by the state attorney general — issued in 1955 when the state was considering whether to allow league staffers to become members of the public retirement system — finding the league to be a public agency.

Mercer County Assignment Judge Linda Feinberg, the Government Records Council and the Appellate Division reached a different conclusion, all three saying that the league was not a public agency because it did not perform a governmental function and was not authorized to spend taxpayer money. They saw the league more as a lobbying agency or trade group.

But the Court found that OPRA's definition of "public agency" was intended to be read expansively so as to provide as much public access to information as possible.

"Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions," Albin said.

The Fair Share Housing Center sued after the league refused to release documents and data related to its opposition to calculations and needs for low- and moderate-cost housing proposed by the Council on

Affordable Housing.

The ruling is an extension of *Times of Trenton Publishing Corp. v. Lafayette Yard Community Development Corp.*, 183 N.J. 519 (2005), where the Court held a redevelopment company should be considered a public agency because 80 percent of its officers were appointed by Trenton's mayor and city council.

Since the statute does not define "instrumentality," Albin turned to *Black's Law Dictionary*, which defines the word as "a thing used to achieve an end or purpose," or a "means or agency through which a function of another entity is accomplished, such as a branch of a governing body."

"Here, the League is achieving an end and providing a function on behalf of all 566 of New Jersey's municipalities," he said. "The more sweeping language of 'public agency' interdicts creative efforts that might thwart the public's efforts to access government records.

"We have no authority, or reason, to erect artificial judicial hurdles for a citizen to gain access to a government record, particularly in light of OPRA's mandate that 'any limitation ... shall be construed in favor of the public's right of access.'"

The Court also rejected the league's argument that documents it maintains should not be considered government records. Such a conclusion, Albin said, "would require us to reach an absurd result."

The Court remanded the case back to Feinberg to determine whether the records sought by the Fair Share Housing Center are covered by any exemptions listed in OPRA.

The center's attorney, Kevin Walsh, said in a statement that the ruling "requires the League of Municipalities, at long last, to operate in the sunshine.

"The Court rejected the league's contention that every one of New Jersey's mayors can join together to do business, lobby the Legislature and spend taxpayer funds out of the public eye," he said. "We look forward to the League opening its records and its books so we can see how taxpayer money is spent."

The league's general counsel, William Kearns Jr., says the league disagrees with the ruling but will comply.

"It's really not that big of a deal because most of what the league has is up on its website anyway," says Kearns, of Willingboro's Kearns, Reale & Kearns. "The league has always tried to be transparent. We will designate a compliance officer."

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