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Honorable Chief Justice Rabner  
and Associate Justices of the New Jersey Supreme Court  
Hughes Justice Complex  
25 West Market Street  
Trenton, New Jersey 08625

**Re: Mirza Bulur, et al v. New Jersey Office of the Attorney General  
and  
Sayegh v. Isa M Abbassi, et al.  
Docket No. 090126**

Mr. Chief Justice and Associate Justices:

Please accept this letter brief in lieu of a more formal brief in opposition to the Petition for Certification filed by the New Jersey Attorney General and, if that Petition is granted, urging the Court to affirm the Appellate Division.

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**STATEMENT OF FACTS**

In the interests of brevity, Amicus New Jersey Institute of Local Government Attorneys adopts the Statement of Facts in the brief filed in the

Appellate Division by Amicus New Jersey League of Municipalities in this matter.

### **PROCEDURAL HISTORY**

In the interests of brevity, Amicus New Jersey Institute of Local Government Attorneys adopts the Statement of Procedural History in the brief filed in the Appellate Division by Amicus New Jersey League of Municipalities in this matter.

### **ARGUMENT**

#### **PRELIMINARY STATEMENT**

This is not a case about whether the Attorney General was right in taking over a municipal Police Department. It is not a case depending on whether the municipal Police Department behaved properly or improperly. There are remedies outside of this case for improper behavior. This case raises issues regarding the allocation of government power.

New Jersey has allocated the power to operate a local Police Department to the municipality. It has given the county prosecutor certain powers over the local Police Department. It has not given the Attorney General those powers, except in certain limited instances not present in this case. The Appellate Division decision respected those limitations.

**POINT 1**

**THE COURT SHOULD DENY THE PETITION FOR CERTIFICATION.**

**A. THE POSITION ADVANCED BY THE ATTORNEY GENERAL DOES NOT MEET THE STANDARD FOR CERTIFICATION.**

*R.2:12-4* provides that:

Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

In this case, the decision of the Appellate Division is not in conflict with any other decision, is not similar to another case pending before the Court nor does this case call for the exercise of the Supreme Court's supervision and control of the courts. The "interest of justice" is not an issue in this matter. Therefore, the only potential ground for certification is whether this case "... presents a question of general public importance which has not been but should be settled by the Supreme Court." Amicus submits that this case does not present percent such a question.

The Court need not disturb the well-reasoned Appellate Division decision. The law, as announced by the Appellate Division, is clear and consistent with long standing principles of constitutional and statutory construction.

The primary issue in this case is not whether the Attorney General should have, or should not have, taken over the Paterson Police Department. The issue is whether the laws of New Jersey delegated that power to the Attorney General.

The Appellate Division decision that the Attorney General lacked that authority properly relies on traditional principles of statutory interpretation. While the takeover of the municipal Police Department may be, to some, a good and proper action, the Attorney General's actions are unsupported by statutory law and contrary to the commands of the New Jersey Constitution. Simply put, the Appellate Division correctly applied traditional principles of statutory interpretation to find that Attorney General does not have the statutory authority to do what he did.

The Appellate Division's decision is not in any way a restricted reading of the statutory authority of the Attorney General. It is plain that there is no explicit statutory authority for the Attorney General's actions. Moreover, the claim that the Attorney General's actions are based on some implied authority is similarly without support.

**B. THE ASSERTION THAT IMPLIED STATUTORY CONSTRUCTION GRANTS THE ATTORNEY GENERAL THE POWER TO TAKE OVER A LOCAL POLICE DEPARTMENT RUNS COUNTER TO THE NEW JERSEY CONSTITUTION.**

Any implied authority assumed by the Attorney General to take over a local police department would run counter to the command of *Article IV, Section VII, Paragraph 11* of the New Jersey Constitution. That paragraph provides:

11. The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

The operation of a municipal police department is provided for by statute. *N.J.S.A. 40A:14-118*. That statute specifically allocates various managerial roles between the municipal governing body, the designated “appropriate authority” and the police chief. There is no room in those statutes, even ignoring the liberal construction commanded by *Article IV, Section VII, Paragraph 11*, for the Attorney General’s exercise of a power to intervene in the day-to-day operations of a municipal police department.

**C. THE STATUTORY INTERPRETATIVE ARGUMENTS  
ADVANCED BY THE ATTORNEY GENERAL DO NOT SUPPORT  
THE ASSUMPTION OF POWER TO TAKE OVER OPERATIONS  
OF A MUNICIPAL POLICE DEPARTMENT.**

In supporting its position that the Attorney General has plenary authority to take over the municipal Police Department, the Attorney General advances seven arguments, none of which overcome the constitutional command that the powers of municipal government be liberally construed in their favor.

First, the Attorney General refers to *N.J.S.A. 52:17B-98*, arguing that a “chain of command” concept implicit in that statute (arising from an obligation to cooperate) gives the Attorney General authority to take over the municipal Police Department because it is within the power of the Attorney General to “do what is necessary” to carry out state policies. *Attorney General Brief at page 12.*

The “chain of command” concept is questionable on its face. In *Yuric v. State, 184 N.J.74, 79-80 (2005)* the court found that although the county prosecutor is subject to the supervision and suppression by the Attorney General, there is no ordinary chain of command between the county prosecutor and the state.

That argument fails because not only is it contrary to the constitutional command of liberally interpreting the powers of a local government, but it simply does not say what the Attorney General claims. Government, whether it

be state or local, does not have the power to “do what is necessary.” Government must operate within the sphere allocated to it either under our constitution or by statute. If the legislature intended for the Attorney General to have the unilateral power to take over day to day operations of a municipal Police Department, simply because the Attorney General felt that “it was necessary” it would have said so. It did not provide that power directly to the Attorney General.

Second, the Attorney General asserts that the “chain of command” concept gives that office the power to “temporarily supersede a law enforcement agency function or case if necessary ...” because it is “inherent in the nature of a chain of command...” *Attorney General Brief at page 13*. In support, the Attorney General argues that *NJ SA 52:17B-107 (a)(1)(a)* provides the power to oversee “any investigation, criminal action or proceeding throughout the state...” That argument also fails.

The “chain of command” concept is unsupported. On top of that, the actions of the Attorney General in taking over operations of a municipal Police Department, at least in this case, are not temporary. Those actions are indefinite. The Attorney General did not take over a case, an investigation or implement a policy within the authority of that office. Instead, it simply took over a local agency’s operations. Those actions go far beyond the “temporary” actions authorized.



Third, the Attorney General asserts the power to take over a municipal police department is found in guidelines directives and policies adopted by the Attorney General to bind law enforcement, citing *Paff v. Ocean County Prosecutor's Office*, 235 N. J. 1 (2018). While *Paff* recognizes the Attorney General's authority to issue guidelines for local police recordkeeping, *Paff* does not support the Attorney General's wholesale takeover of a municipal Police Department.

*Paff* was a case involving the criminal investigatory records exception to the Open Public Records Act (OPRA). The Attorney General, acting pursuant to legislative authority, issued a requirement regarding use of force reports. The question in *Paff* was whether the exception in OPRA for criminal investigatory records covered those reports. *Paff* does not support an inherent authority in the Attorney General to take over operations of the municipal Police Department.

Fourth, the Attorney General relies upon the Internal Affairs Policy And Procedures (IAPP) directive issued by his office. That policy unilaterally assumed the power to takeover municipal police departments, providing:

The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited capacity and take control of a specific case or investigation. Whenever the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency.

It runs counter to the constitutional requirement of liberal construction of municipal power to allow the Attorney General to self-create a unilateral power of takeover. Issuing an internal affairs directive governing how the municipal Police Department should operate is within the Attorney General's delegated powers. Nowhere is the Attorney given the power to create his own authority. See also *Point 1.D* below regarding the need to comply with administrative law in that regard.

Fifth, the Attorney General relied upon the statutory authority of the County Prosecutor to support the claim that the Attorney General has direct power to supersede take over the operations of a local police agency. *See Attorney General brief at page 14.*

The powers of the county prosecutor are different from those of the Attorney General. The county prosecutor, as chief law enforcement officer of the county, *State v. Vitiello, 377 N.J. Super 452, 457 (App. Div. 2005)*, has the authority to take over a local Police Department. Nowhere in the Attorney General's powers is that found.

The fact that the Attorney General supervises the prosecutor does not translate into the Attorney General's automatically being given the prosecutor's powers directly. If the Attorney General believed that the prosecutor was not properly conducting his office, it could act on the prosecutor. Once that was

accomplished, the Attorney General could then exercise the powers of the county prosecutor, through the prosecutor's office. There is no provision to bypass that process.

Our laws are set up to channel government action for the protection of citizenry and, in the case of a municipal government, to meet the constitutional requirement of liberal interpretations of municipal government power. The channels established by our laws must be respected. The Attorney General's unilateral takeover of a municipal Police Department falls outside those proper channels.

Sixth, the Attorney General cites 26 past takeovers in various stages to buttress its argument that the unilateral power of takeover exists. See *Attorney General brief at page 14*. The problem with that is that the Attorney General's brief acknowledges that of those 26 takeovers, 17 were taken by a county prosecutor (obviously not the Attorney General and thus not precedential); and 8 were actions by the Attorney General to take over the actions of a county prosecutor done with clear authority. See *Attorney General's brief at pages 14-15*.

History simply does not support the Attorney General's argument. It is difficult to rely on a past practice to support an assumed power where the past practice did not reflect the power assumed.

There is no assertion that any of these historic actions by the Attorney General were contested. In the absence of a contest, it would be reasonable to conclude that the various localities involved consented to the actions of the Attorney General. That consent does not translate into a unilateral power. Moreover, the unilateral exercise of a power does not translate itself into a legislatively authorized power. The power must be rooted in legislation which itself must be reviewed to determine if the power exists. Here, it does not.

Finally, the Attorney General argues that *L. 2023, Ch 94 (chapter 94)* evidences the legislative intent to grant to the Attorney General the authority to take over operations of the municipal police because the legislature appropriated funds to assist in the operations of the a taken over municipal Police Department. The Attorney General contends that the legislature acquiesced in the Attorney General's power of takeover by that action.

The actions of the legislature cannot be expanded to authorize unilateral action by the Attorney General simply because state appropriations were made. Appropriations are made for a variety of reasons. The fact that the legislature appropriated money to help pay for what the Attorney General may have already done cannot be transformed into a grant of plenary power to the Attorney General to take over operations of a municipal Police Department whenever the Attorney General unilaterally believes it is "necessary."

**D. THE ASSERTION THAT IMPLIED STATUTORY CONSTRUCTION GRANTS THE ATTORNEY GENERAL THE POWER TO TAKE OVER A LOCAL POLICE DEPARTMENT RUNS COUNTER TO THE ADMINISTRATIVE PROCEDURE ACT.**

Even if some “implied” power exists which would overcome the required liberal construction of the various statutes governing municipal police activities, the Attorney General’s actions failed to comply with the Administrative Procedure Act to the extent applicable, or at least establish clear standards and policies. *In Re Attorney General Law Enforcement Directives Nos. 2020-5 and 2020-6, 246 N.J. 462, 483 (2021).*

The Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, requires that all generally applicable policies of a state agency be announced by a regulation adopted pursuant to the procedures set forth in that statute, including publication of a proposed regulation, public comments, response from the agency and final adoption.

The Attorney General's office is a state agency. The Attorney General is obligated to follow the rule-making requirements of the Administrative Procedure Act. *N.J.S.A. 52:14B-3a*. The actions of the attorney general in adopting a rule which would allow takeover of a municipal Police Department would be an “administrative rule” under the Administrative Procedure Act. *N.J.S.A. 52:14B-2*

*In Re Attorney General Law Enforcement Directives Nos. 2020-5 and 2020-6, supra.*, the Court reviewed the Attorney General's directives dealing with internal affairs and did not apply the Administrative Procedures Act because the directives governed the internal operations of the agency citing *N.J.S.A. 52:14B-2*. The case at bar is slightly different. Here, the Court is not dealing with the internal management and discipline of an agency, but rather with the question of whether the agency has the power to unilaterally suppress another municipal government agency. The power to do that without the safeguards provided in the administrative review process runs counter to our concepts of due process.

No safeguards are applicable to the Attorney General's actions in this matter. Had the safeguards provided in the Administrative Procedure Act and its regulations been followed, input from the various constituencies affected by the Attorney General's regulation regarding agency takeover would be heard, the regulation would be considered and tailored, and municipalities, police departments and a reviewing court would have a standard against which to judge the power and actions of the Attorney General. In this case, the Attorney General unilaterally assumed a power he did not have; a power without limit.

The court has determined that "[w]hen an executive branch official acts in a quasi-legislative manner, the arbitrary and capricious "standard does

demand that the reasons for the decision be discernible, [but they] need not be as detailed or formalized as an agency adjudication of disputed facts.” *In Re Attorney General Law Enforcement Directives Nos. 2020-5 and 2020-6, supra. at 491.* In this case, and in the case of a takeover generally under the IAPP directive, there is no ascertainable standard against which to judge the Attorney General’s actions in exercising the implied power he claims. To do so on a case-by-case basis would wreak havoc on the operations of the local police department, without guidance as to whether and why the Attorney General would exercise the hitherto unknown power to take over the department. If such an implied power exists (and we deny that such a power exists) then properly adopted regulations would provide the required guidance. There are no such regulations.

The Attorney General overlooked the required liberal grant of power to the municipality, overlooked traditional principals of statutory interpretation and proceeded to strip the Police Department from its municipal roots based on the based on nothing more than an unsupported implied power.

There is no reason for the Court to grant certification.

**POINT 2**

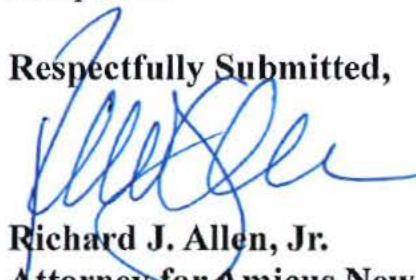
**IF THE COURT SHOULD GRANT CERTIFICATION IN THIS MATTER, THE COURT SHOULD AFFIRM THE APPELLATE DIVISION.**

Even if the Court should grant certification, the Court should affirm the well-reasoned decision of the Appellate Division for the reasons cited in Point 1 above.

**CONCLUSION**

For the foregoing reasons, Amicus urges the Court to deny the Petition for Certification. If the Court should grant that Petition, Amicus urges the Court to affirm the Appellate Division which respects both the liberal interpretation of the powers of municipal government required by our New Jersey constitution and the proper allocation of government power.

**Respectfully Submitted,**



**Richard J. Allen, Jr.  
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of Local Government Attorneys**

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