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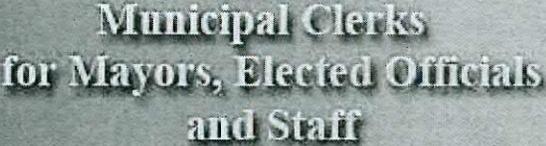
Masser, Michelle

From: Lashway, Lisa
Sent: Friday, February 03, 2012 10:45 AM
To: Canning, Sean; Masser, Michelle; Lindsay, Gary; Marchione, John; Wilpert, Frank; Spitzer, Mark; Natafalusy, Catherine; Quinn, Tim
Subject: FW: Heine Decision

Lisa Lashway
Township Clerk
Township of Mount Olive
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973-691-0900 Ext. 7290

From: NJLM to Municipal Officials [mailto:njlm-clerks@cityconnections.com]
Sent: Friday, February 03, 2012 10:23 AM
To: Lashway, Lisa
Subject: Heine Decision

To view an online version of this email, click [here](#).



February 2, 2012

Re: Decision in State v. Heine and how it affects municipal inspections

Dear Mayor:

The League wants to inform you of an important decision reached the Appellate Division yesterday in the case of State v. Heine.

In that case, Heine, the property owner, refused to allow the municipal health, construction, and fire officials to inspect her property, which contained several tenants, in response to several complaints. She was then charged and convicted under an ordinance that makes it illegal to deny municipal officials the ability to inspect premises.

Heine appealed, and her conviction was overturned by the Appellate Division. The Court ruled, “criminalization of Heine's refusal to allow the inspections is not in accordance with long established law.” Specifically, this violates the protections against unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution. The Court found that the attempted search in the Heine case was an administrative search. In an administrative search, the only exceptions to the warrant requirements are (1) consent (2) the subject matter is in an area of long-term, traditional governmental regulation, a so-called closely regulated industry; or (3) an emergency or public health danger is presented. The Court held that none of those exceptions applied and that a warrant was necessary in this case.

The proper procedure in these cases is to attempt to gain access with permission of the owner. If that is unavailing, the municipality may attempt to secure a search warrant. In any case, a town may not punish an individual for denying access to their property when the municipal official does not have a warrant.

We encourage you to discuss this decision with your municipal attorney and to review your ordinances as needed. If you have any questions or require further information, please contact League Staff Attorney Matthew Weng at 609-695-3481 ext 137 or at mweng@njslom.com.

Very truly yours

William G. Dressel, Jr.

Executive Director

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New Jersey League of Municipalities
222 West State Street, Trenton, NJ 08608
609-695-3481

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