



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE CITY OF NEWARK, a municipality  
of the State of Delaware, and GEORGE J.  
CLIFTON, a resident of the City of Newark,  
Delaware,

Petitioners,

v.

MATTHEW MEYER,  
County Executive, New Castle County;  
KAREN HARTLEY- NAGLE,  
President, New Castle County Council;  
KENNETH R. WOODS, Councilman;  
DEE DURHAM, Councilwoman;  
JANET KILPATRICK, Councilwoman;  
PENROSE HOLLINS, Councilman;  
LISA DILLER, Councilwoman;  
DAVID CARTER, Councilman;  
GEORGE SMILEY, Councilman;  
JOHN CARTIER, Councilman;  
TIMOTHY SHELDON, Councilman;  
JEA P. STREET, Councilman;  
DAVID TACKETT, Councilman;  
BILL BELL, Councilman; and  
VANESSA PHILLIPS, Chief Administrative  
Officer, New Castle County,

Respondents.

C.A. No. \_\_\_\_\_

## **VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

### **Introduction**

This case involves a dispute between the City of Newark and New Castle County over the funding of fire protection services provided in the City of Newark. Newark alleges that the County's Local Service Function Budget for fiscal year 2020, and its revenue ordinance for fiscal year 2020 violate Title 9, Chapter 11 of the Delaware Code because the County is charging Newark residents County property taxes to fund fire protection services that Newark residents are already paying for through their Newark property taxes. Newark is requesting that the Court: (i) declare that the County's Local Service Function Budget for fiscal year 2020, and its revenue ordinance for fiscal year 2020 are illegal because they violate Title 9, Chapter 11 of the Delaware Code; (ii) order the County to refund any revenue collected by way of its illegal revenue ordinance for fiscal year 2020; and (iii) order the County to prepare and enact a Local Service Function Budget for fiscal year 2020, and a revenue ordinance for fiscal year 2020 that comply with Title 9, Chapter 11 of the Delaware Code.

### **The Parties**

I. Petitioner, City of Newark ("Newark" or the "City") is a municipality within the meaning of Subchapter III of Title 11 of the Delaware Code.

2. Petitioner, George J. Clifton resides and owns real property within the corporate limits of Newark. His address is 1000 Fountainview Circle, Suite 202, Newark, DE 19713. Mr. Clifton is subject to and assessed the taxes by New Castle County which are the subject of this action. As a resident and real property owner in New Castle County and Newark, Mr. Clifton has been harmed by the conduct of the Respondents complained of herein, and he has standing to petition the Court for redress.

3. Defendant, Matthew Meyer ("Mr. Meyer") is County Executive of New Castle County. Defendants, Karen Hartley-Nagle, Kenneth R. Woods, Dee Durham, Janet Kilpatrick, Penrose Hollins, Lisa Diller, David Carter, George Smiley, John Cartier, Timothy Sheldon, Jea P. Street, David Tackett and Bill Bell (collectively "New Castle County Council") are all of the members of the New Castle County Council. Defendant, Vanessa Phillips ("Ms. Phillips") is the Chief Administrative Officer of New Castle County, Delaware.

### **Facts**

4. Title 9, Chapter 11 of the Delaware Code grants the County government its general power to operate. 9 *Del. C.* §1102 sets forth a number of governmental functions that are the primary responsibility of the County (and of the various municipalities in New Castle County) to provide and fund. Section

1102 refers to these as the “Local Service Functions”. Among the Local Service Functions enumerated in §1102 (a) is fire protection.

5. 9 *Del. C.* §1131 (a) addresses the County budgeting process and directs the County’s Chief Administrative Officer and the County Executive: “in the preparation of the annual operating budget” to “divide and segregate in a separate budget, entitled Local Service Function Budget, all expenditures for the performance of local service functions which are not performed by the County within the limits of any municipality.” Section 1131(a) further requires the Chief Administrative Officer and the County Executive to specify separately the total appropriation required for each local service function, including appropriations for Supporting Services, which is not performed by the County within the limits of any municipality. In preparing the revenue side of the Local Services Function Budget, the Chief Administrative Officer and the County Executive are not permitted under §1131(a) to include revenues to be derived from property taxes within any municipality which performs a local service function independently for its residents and pays the cost thereof out of its own revenue sources.

6. Moreover, under 9 *Del C.* §1131 (b) the County Executive and the County Council are prohibited from enacting a revenue ordinance that imposes property taxes within any municipality to pay the cost of any local service function

if such function is performed by the municipality for its residents, and the cost thereof is paid out of municipal revenues.

7. For over 100 years, the City has funded some (but not all) of the cost of the fire protection services provided by Aetna Hose, Hook & Ladder Company (“Aetna”) within the City limits by way of property taxes assessed against Newark property owners like Mr. Clifton. By way of the most recent examples, in 2018, Newark contributed \$121,722.00 in cash and free municipal services to Aetna to pay for fire protection in the City. In 2019, Newark will contribute approximately \$232,000.00 in cash and free municipal services to Aetna.

8. Therefore, under Title 9 Chapter 11, the County’s Local Service Function Budget for fiscal year 2020, and its revenue ordinance for fiscal year 2020 are required to provide a local service function credit to Newark property owners to offset the City’s contributions to Aetna. For the past several decades, the County has provided Newark property owners with a local service function credit for the financial assistance the City provided to Aetna for fire protection.

9. However, prior to the County’s adoption of its revenue ordinance for fiscal year 2020, the County informed the City representatives that the budget would not include a local service function credit for fire protection for Newark property owners.

10. In response, on May 7, 2019, City Manager, Thomas Coleman sent an email objecting to the County's position that the City's local service function credit for fire protection would not be included in the budget. In this email Mr. Coleman provided a link to the City's proposed Resolution requesting the County restore the local service function credit. A copy of Mr. Coleman's email is attached hereto and made part hereof as Exhibit "A".

11. On May 13, 2019, the Newark City Council adopted this Resolution. A copy of this Resolution is attached hereto and made part hereof as Exhibit "B".

12. City Manager Coleman and City Finance Director, David Del Grande attended the County Finance Committee meeting held May 14, 2019. At this meeting, Mr. Coleman advised that Council had adopted the Resolution, and urged the Committee to reverse course and recommend that County Council restore the local service function credit for fire protection.

13. On May 22, 2019 representatives of the City and County met again to discuss the restoration of the local service function credit for fire protection.

14. On May 28, 2019, just hours before the County Council adopted its 2020 Budget, the City was informed by the Acting County Attorney that the local service function credit for fire protection would not be restored because "the City had not demonstrated that it exercised responsibility for fire protection within the

City limits before January 3, 1967.” A copy of this email is attached hereto and made part hereof as Exhibit “C”.

15. On May 28, 2019, the County passed its revenue ordinance for fiscal year 2020 that did not include a local service function credit for fire protection to Newark property owners in contravention 9 *Del. C.* §1131 (b). The illegal revenue ordinance results in a property tax overcharge to Newark property owners for fiscal year 2020 of approximately ***\$170,000.00***.

### **COUNT I**

#### **Request for Declaratory Judgment**

16. Petitioners repeat and re-allege the allegations set forth in paragraphs 1-15 above as if fully stated herein.

17. The Declaratory Judgment Act, 10 *Del. C.* § 6501 *et seq.*, is used to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.

18. There exists a controversy regarding the legal relations between the parties; namely whether the County is required by 9 *Del. C.* §1131 (b) to include in its 2020 revenue ordinance a local service function credit for fire protection to Newark property owners for property taxes they pay to Newark which fund, either in the form of cash or municipal services, fire protection services Aetna provides in the City.

19. The City asks the Court to declare that the County's Local Service Function Budget for fiscal year 2020, and its revenue ordinance for fiscal year 2020 are illegal under Title 9, Chapter 11 of the Delaware Code because they do not include the required local service function credit for fire protection to Newark property owners.

## **COUNT II**

### **Request for Mandatory Injunction**

20. Petitioners repeat and re-allege the allegations set forth in paragraphs 1-19 above as if fully stated herein.

21. The County's refusal to include in the Local Service Function Budget for fiscal year 2020, and in its revenue ordinance for fiscal year 2020, a local service function credit for fire protection to Newark property owners is in violation of Title 9 Chapter 11 and is beyond the powers granted to it under state law. Petitioners have been damaged by the County's unlawful conduct.

22. Petitioners are therefore entitled to a mandatory injunction directing the County to: (i) immediately refund any property taxes illegally collected under the revenue ordinance for fiscal year 2020 and (ii) order Respondents to prepare, submit and enact a Local Service Function Budget and a revenue ordinance for fiscal year 2020 that comply with 9 *Del. C.* §1102 and §1131 and provide the local service function credit for fire protection.



**WHEREFORE**, the City and Mr. Clifton respectfully request that this Court:

A. declare that the New Castle County's Local Service Function Budget for fiscal year 2020, and its revenue ordinance for fiscal year 2020 are illegal because they violate Title 9, Chapter 11 of the Delaware Code;

B. order New Castle County to refund any revenue collected by way of its illegal revenue ordinance for fiscal year 2020;

C. order New Castle County to prepare and enact a Local Service Function Budget for fiscal year 2020, and a revenue ordinance for fiscal year 2020 that comply with Title 9, Chapter 11 of the Delaware Code;

D. order New Castle County to reimburse Petitioners for all costs and counsel fees incurred in this action; and

E. award such other and further relief as this Court deems equitable.

Office of the City Solicitor  
City of Newark, Delaware

/s/ Paul E. Bilodeau

Paul E. Bilodeau (Bar. No. 2683)

220 South Main Street

Newark, DE 19711

Tel: 302-366-7000 x 1007; 302-656-6899

Email: [pbilodeau@delaw.com](mailto:pbilodeau@delaw.com)

*Counsel to Petitioners*

and

LOSCO AND MARCONI, P.A.

/s/ Thomas C. Marconi

Thomas C. Marconi (Bar No. 2761)

1913 North Franklin Street

P.O. Box 1677

Wilmington, DE 19899

Tel: 302-656-7776

Email: tmarconi@delaw.org

*Special counsel to Petitioner, the City of  
Newark*

**WORD COUNT: 1873**

Dated: August 13, 2019



# EXHIBIT "A"

**From:** Thomas Coleman

**Sent:** Tuesday, May 7, 2019 4:26 PM

**To:** 'karen.barlow@newcastlede.gov' <karen.barlow@newcastlede.gov>; 'james.bell@newcastlede.gov' <james.bell@newcastlede.gov>; 'james.boyle@newcastlede.gov' <james.boyle@newcastlede.gov>; 'Carter, David' <David.Carter@newcastlede.gov>; 'john.cartier@newcastlede.gov' <john.cartier@newcastlede.gov>; 'Christopher.Counihan@newcastlede.gov' <Christopher.Counihan@newcastlede.gov>; 'Anthony.deFiore@newcastlede.gov' <Anthony.deFiore@newcastlede.gov>; 'elisa.diller@newcastlede.gov' <elisa.diller@newcastlede.gov>; 'dee.durham@newcastlede.gov' <dee.durham@newcastlede.gov>; 'tara.finnigan@newcastlede.gov' <tara.finnigan@newcastlede.gov>; 'valerie.george@newcastlede.gov' <valerie.george@newcastlede.gov>; 'daniel.hagelberg@newcastlede.gov' <daniel.hagelberg@newcastlede.gov>; 'kathleen.harris@newcastlede.gov' <kathleen.harris@newcastlede.gov>; 'karen.hartley-nagle@newcastlede.gov' <karen.hartley-nagle@newcastlede.gov>; 'nellie.hill@newcastlede.gov' <nellie.hill@newcastlede.gov>; 'penrose.hollins@newcastlede.gov' <penrose.hollins@newcastlede.gov>; 'charneece.jackson@newcastlede.gov' <charneece.jackson@newcastlede.gov>; 'janet.kilpatrick@newcastlede.gov' <janet.kilpatrick@newcastlede.gov>; 'michael.migliore@newcastlede.gov' <michael.migliore@newcastlede.gov>; 'Marylee.M.Dichiario@newcastlede.gov' <Marylee.M.Dichiario@newcastlede.gov>; 'michael.rodriguez@newcastlede.gov' <michael.rodriguez@newcastlede.gov>; 'christine.roberts@newcastlede.gov' <christine.roberts@newcastlede.gov>; 'timothy.sheldon@newcastlede.gov' <timothy.sheldon@newcastlede.gov>; 'george.smiley@newcastlede.gov' <george.smiley@newcastlede.gov>; 'jea.street@newcastlede.gov' <jea.street@newcastlede.gov>; 'david.tackett@newcastlede.gov' <david.tackett@newcastlede.gov>; 'nique.traylor@newcastlede.gov' <nique.traylor@newcastlede.gov>; 'robert.wasserbach@newcastlede.gov' <robert.wasserbach@newcastlede.gov>; 'kenneth.woods@newcastlede.gov' <kenneth.woods@newcastlede.gov>; 'Rachel.Zara@newcastlede.gov' <Rachel.Zara@newcastlede.gov>; 'Matthew.Meyer@newcastlede.gov' <Matthew.Meyer@newcastlede.gov>; 'Vanessa.Phillips@newcastlede.gov' <Vanessa.Phillips@newcastlede.gov>; 'ALAlmond@nccde.org' <ALAlmond@nccde.org>; 'Susan.Moore@newcastlede.gov' <Susan.Moore@newcastlede.gov>; 'David.Gregor@newcastlede.gov' <David.Gregor@newcastlede.gov>  
**Cc:** 'James Horning' <horningfornewark@gmail.com>; 'Sharon Hughes' <shughes2853@gmail.com>; Jen Wallace <jen@jenwallacefornewark.org>; Chris Hamilton (hamilton4newark@gmail.com) <hamilton4newark@gmail.com>; 'Jason Lawhorn' <lawhornfornewark@gmail.com>; 'Stu Markham' <stu.markham@gmail.com>; gjclifton@verizon.net; David Del Grande <DDelGrande@newark.de.us>; Renee K. Bensley <RBensley@Newark.de.us>; Tara Schiano <TSchiano@Newark.de.us>; Mark Farrall <MFarrall@Newark.de.us>

**Subject:** Changes to Local Service

Good afternoon County Council,

The City of Newark is opposed to the manner in which the changes to the local service process are being considered for the County's proposed FY2020 Operating Budget. Local Service credits granted to the City of Newark taxpayers which have been remained relatively unchanged since the late 1960's, are changing now under what the County has deemed "housekeeping."

City of Newark residents have received the local service credit for "fire service" since the County moved away from the Levy Court form of Government. Changing something that has been in place this long, we feel, requires more transparency and open discussions between the City and the County. The City agrees that the process needs to be reviewed, made more efficient and improved, but changes need to be communicated well in advance, so municipalities have an opportunity to respond, and not have them presented to them literally hours before the County Executive's budget address.

Our interpretation of state code differs from the County's interpretation when it comes to the fire service credit. The City makes the claim that our annual financial support to Aetna Hose Hook and Ladder meets the intent of the local service program as it is functionally equivalent to the County's fire service financial support. In addition, we may also have a difference of opinion on the County's interpretation of Title 9, Chapter 11, section 1131. We believe that this section of state code differs from the County's current budgeting practice. Section 1131 in our eyes, means that each local service function should be self-contained within its own fund, similar to the County's crossing guard and street light programs. Both the crossing guard and street light funds used to be contained in the general fund until the mid-2000's, when a lawsuit moved the County to segregate these two functions from general fund operations. Since street lights is still mentioned as an allowable local service function under current state code, the justification for the County to abandon the "general fund" as it is used today to record all GOB and local service activity is reasonable.

Lastly, the review process of the local service function by the Finance Office and the County Auditor is not yet complete, and we have been told it could take another two years to do so. For this reason, any changes in past practices should be suspended until the process has been fully vetted and reviewed. Our request would be to include the municipalities in this discussion during this review period.

Our City Council will be discussing this issue during our May 13 Council meeting. Below is a link to the agenda and the resolution up for consideration:

May 13 City of Newark Council Meeting Agenda:

<https://newarkde.gov/ArchiveCenter/ViewFile/Item/6069>

Item 6D: Resolution No. 19-\_\_: A Resolution to Request New Castle County Government Restore the City of Newark's Local Service Credit for Fire Service for County Fiscal Year 2020; Freeze the Implementation of Any Change in the Local Service Function Process Until All Municipalities Are Provided an Equitable Opportunity to Discuss Any Recommended Change; and Urge the County to Establish Separate Funds for GOB and Local Service Functions to Provide Full Transparency Regarding the Funding of County Services

<https://newarkde.gov/DocumentCenter/View/12314/6D>

If you would like to send a representative to the meeting, it would be very much appreciated so we can continue our discussions on this matter.

Thank you

Tom Coleman, PE  
City Manager, City of Newark  
302-366-7000 | 220 S. Main Street | Newark, DE 19711  
[www.newarkde.gov](http://www.newarkde.gov)



# EXHIBIT "B"

**CITY OF NEWARK  
DELAWARE**

**RESOLUTION NO. 19-P**

**A RESOLUTION TO REQUEST NEW CASTLE COUNTY GOVERNMENT RESTORE THE CITY OF NEWARK'S LOCAL SERVICE CREDIT FOR FIRE SERVICE FOR COUNTY FISCAL YEAR 2020; FREEZE THE IMPLEMENTATION OF ANY CHANGE IN THE LOCAL SERVICE FUNCTION PROCESS UNTIL ALL MUNICIPALITIES ARE PROVIDED AN EQUITABLE OPPORTUNITY TO DISCUSS ANY RECOMMENDED CHANGE; AND URGE THE COUNTY TO ESTABLISH SEPARATE FUNDS FOR GOB AND LOCAL SERVICE FUNCTIONS TO PROVIDE FULL TRANSPARENCY REGARDING THE FUNDING OF COUNTY SERVICES**

WHEREAS, Title 9 of the Delaware State Code established the concept of the "Local Service Function" for New Castle County where owners of real property within a municipality may be provided County tax relief for services also provided by their respective municipality to its taxpayers to avoid duplication of taxation; and

WHEREAS, the annual local service application process has remained relatively unchanged since the 1960's, with the only known modification to Newark's local service function credit occurring on July 1, 1982 granting City of Newark taxpayers a credit for Newark's low-income housing program (via County ordinance 81-002); and

WHEREAS, New Castle County's Office of Finance, in an effort to streamline and simplify the local service process, is recommending a deviation to the manner in which local service credits are granted to municipalities by eliminating the fire service credit for residents of the City of Newark without fully completing the review process for credits county-wide, thereby unfairly impacting the residents of the City of Newark; and

WHEREAS, the City of Newark provides a functionally equivalent fire service function, similar to what is provided by New Castle County, through annual subvention payments to the local volunteer fire company, satisfying the intent of the local service function credit legislation; and

WHEREAS, the proposed tax increase directly related to elimination of the fire service credit will generate \$170,000 in tax revenue for New Castle County from Newark taxpayers, with the County not passing this increase to Aetna Hose Hook and Ladder Company, resulting in the double-taxation of Newark property owners for fire service; and

WHEREAS, the County's proposal to continue to allow local tax credits for police services to two municipalities who do not have a police force will result in the loss of \$350,000 annually in tax revenue, which is double the amount proposed to be charged to City of Newark taxpayers; and

WHEREAS, transparency and open communication are vital components to maintaining the public's trust at all levels of government; and

WHEREAS, the City of Newark respectfully requests that the review process of the local service program also include separate fund accounting to ensure that the funds collected for local service functions are solely used for those purposes; segregating general operating budget (GOB) programs from local service functions (LSFB); and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newark, respectfully requests the following from the County Council of New Castle County:

- Restore the annual fire service credit to the City of Newark for fiscal year 2020, commencing on July 1, 2019 in order to recognize that the City of Newark taxpayers are providing resources to Aetna Hose Hook and Ladder Company for the services that they provide to the City of Newark; and
- Establish separate funds beginning in FY2020 to segregate all GOB tax revenue from Local Service tax revenue for full transparency, and to ensure that all tax revenue collected by New Castle County is utilized for the purposes or functions it was intended; and
- Suspend any changes to the local service program until the process has been fully reviewed and discussed with the impacted municipalities; and
- Continue local service discussions with all impacted municipalities with changes to be mutually implemented on a mutually acceptable timeframe (as all municipalities have different fiscal years).

RESOLVED at a Regular Meeting of Council on May 13, 2019.

VOTE: 7 to 0.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Acting City Secretary

#### SYNOPSIS

This resolution requests New Castle County restore the City of Newark's local service tax credit for fire service, work with the City of Newark and other impacted New Castle County municipalities over the next year towards revisions to the local service process that may impact municipalities, and consider the segregation of general operating programs (GOB) from local service programs (LSFB) through the establishment of separate funds to promote transparency.





# EXHIBIT "C"

**From:** Sullivan, Karen <Karen.Sullivan@newcastlede.gov>

**Sent:** Tuesday, May 28, 2019 12:42 PM

**To:** Smiley, George <George.Smiley@newcastlede.gov>; Cartier, John <John.Cartier@newcastlede.gov>; Bell, James <Bill.Bell@newcastlede.gov>; Carter, David <David.Carter@newcastlede.gov>; Diller, Elisa <Elisa.Diller@newcastlede.gov>; Durham, Dee <Dee.Durham@newcastlede.gov>; Hartley-Nagle, Karen <Karen.Hartley-Nagle@newcastlede.gov>; Hollins, Penrose <Penrose.Hollins@newcastlede.gov>; Kilpatrick, Janet <Janet.Kilpatrick@newcastlede.gov>; Sheldon, Timothy <Timothy.Sheldon@newcastlede.gov>; Street, Jea <Jea.Street@newcastlede.gov>; Tackett, David <David.Tackett@newcastlede.gov>; Woods, Kenneth <Kenneth.Woods@newcastlede.gov>; Wasserbach, Robert <Robert.Wasserbach@newcastlede.gov>; Migliore, Michael <Michael.Migliore@newcastlede.gov>; Barlow, Karen <Karen.Barlow@newcastlede.gov>; Boyle, James <James.Boyle@newcastlede.gov>; Counihan, Christopher <Christopher.Counihan@newcastlede.gov>; deFiore, Anthony <Anthony.deFiore@newcastlede.gov>; Finnigan, Tara <Tara.Finnigan@newcastlede.gov>; George, Valerie <Valerie.George@newcastlede.gov>; Hagelberg, Daniel <Daniel.Hagelberg@newcastlede.gov>; Harris, Kathleen <Kathleen.Harris@newcastlede.gov>; Hill, Nellie <Nellie.Hill@newcastlede.gov>; Jackson, Charneece <Charneece.Jackson@newcastlede.gov>; MurphyDichiaro, Marylee <Marylee.MurphyDichiaro@newcastlede.gov>; Rodriguez, Michael <Michael.Rodriguez@newcastlede.gov>; Roberts, Christine <Christine.Roberts@newcastlede.gov>; Traylor, Nique <Nique.Traylor@newcastlede.gov>; Zara, Rachel <Rachel.Zara@newcastlede.gov>; Meyer, Matthew <Matthew.Meyer@newcastlede.gov>; Phillips, Vanessa <Vanessa.Phillips@newcastlede.gov>; Almond, Aundrea <Aundrea.Almond@newcastlede.gov>; Moore, Susan <Susan.Moore@newcastlede.gov>; Gregor, David <David.Gregor@newcastlede.gov>; Ford, Victoria <Victoria.Ford@newcastlede.gov>; Bhatnagar, Sanjay <Sanjay.Bhatnagar@newcastlede.gov>; Thomas Coleman <TColeman@Newark.de.us>; horningfornewark@gmail.com; shughes2853@gmail.com; jen@jenwallacefornewark.org; hamilton4newark@gmail.com; lawhornfornewark@gmail.com; stu.markham@gmail.com; gjclifton@verizon.net; David Del Grande <DDelGrande@newark.de.us>; Renee K. Bensley <RBensley@Newark.de.us>; Tara Schiano <TSchiano@Newark.de.us>; Mark Farrall <MFarrall@newark.de.us>

**Subject:** FW: [EXTERNAL] Changes to Local Service

**Importance:** High

I write in response to Mr. Coleman's email below. The City of Newark has failed to demonstrate that the County must provide it a local service function credit for fire service. The City premises its request for a credit on Ms. Gottschalk's memorandum dated May 23, 2019 and the Delaware Supreme Court's decision in *Wilmington v. Conner*, 298 A.2d 771 (Del. 1972). It is unclear how the City believes the *Conner* decision supports its position, and the only support that could be provided by Ms. Gottschalk's memorandum is premised upon facts that have not been demonstrated to be true. Ms. Gottschalk's memorandum concludes: "If Newark is responsible for providing fire service in the city's corporate limits because Newark provided fire service to city residents before January 3, 1967 and that responsibility was never transferred to New Castle County, New Castle County may not impose a tax on real property within the Newark

corporate limits to pay for fire service." (emphasis added). The City has failed to provide any evidence that supports the supposition on which Ms. Gottschalk's conclusion is based – the City has not demonstrated that it exercised the responsibility for fire protection within the City limits before January 3, 1967.

The County's records reflect that the City of Newark did not receive a local service function credit for fire protection for fiscal year 1967-68, the first fiscal year after January 3, 1967. Indeed, the only municipality that did receive a credit for fire protection was the City of Wilmington. The County's research, both from its' own records and Aetna Hose Hook & Ladders website, has revealed that the City first contracted with Aetna Hose Hook & Ladder in 1968. Moreover, in the 1972 *Conner* decision relied on by the City, the Supreme Court addressed a credit for fire service only for the City of Wilmington. If the City of Newark also had been entitled to a local service function credit, the Supreme Court presumably would have addressed it. Consequently, because the City has not shown that it exercised responsibility for fire protection as of January 3, 1967, then ordinances passed by the County Council and the City Council are required to transfer the function. 9 Del. C. § 1102(c); 55 Del. Laws c. 85, § 1 ("Responsibility for a local service function or a [distinct] activity or portion thereof not exercised by New Castle County or by a municipality located within New Castle County as of the effective date of this act, or exercised by New Castle County as of the effective date of this act, may be transferred to a municipality located within New Castle County by the concurring affirmative action in the form of an ordinance of the County Council of New Castle County and of the governing body of the municipality concerned.") (emphasis added). The County has not located such ordinances, and the City has not provided the County copies of such ordinances.

Sincerely,  
Karen

Karen V. Sullivan  
Acting County Attorney  
New Castle County  
87 Reads Way  
New Castle, DE 19720  
(302) 395-5132



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

THE CITY OF NEWARK, a municipality  
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Respondents.

C.A. No. \_\_\_\_\_

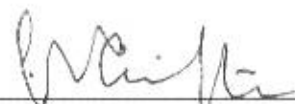
VERIFICATION OF GEORGE J. "JERRY" CLIFTON

STATE of DELAWARE                   :  
   :  
COUNTY of NEW CASTLE           :

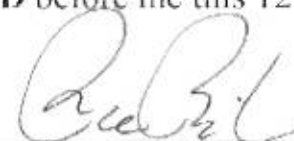
**BEFORE ME**, an Attorney at Law of the State of Delaware, appeared George J. "Jerry" Clifton, who, after being duly sworn, did depose and say as follows, to wit:

1. I am George J. "Jerry" Clifton, resident of the City of Newark, and property owner in the City of Newark. I have reviewed the attached *Petition for Declaratory and Injunctive Relief*.

2. The facts and statements set forth therein are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
George J. "Jerry" Clifton,  
Resident and Property Owner,  
City of Newark, Delaware

**SWORN TO AND SUBSCRIBED** before me this 12<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_  
Paul E. Bilodeau, Esquire (#2683)  
Attorney at Law-Delaware  
Notary Per 29 Del.C. §4323

PAUL E. BILODEAU  
Attorney at Law  
Notarial Officer State of Delaware  
My Commission Has No Expiration Date  
29 Del.C. §4323(a)(3)



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

THE CITY OF NEWARK, a municipality  
of the State of Delaware, and GEORGE J.  
CLIFTON, a resident of the City of Newark,  
Delaware,

Petitioners,

v.

MATTHEW MEYER,  
County Executive, New Castle County;  
KAREN HARTLEY- NAGLE,  
President, New Castle County Council;  
KENNETH R. WOODS, Councilman;  
DEE DURHAM, Councilwoman;  
JANET KILPATRICK, Councilwoman;  
PENROSE HOLLINS, Councilman;  
LISA DILLER, Councilwoman;  
DAVID CARTER, Councilman;  
GEORGE SMILEY, Councilman;  
JOHN CARTIER, Councilman;  
TIMOTHY SHELDON, Councilman;  
JEA P. STREET, Councilman;  
DAVID TACKETT, Councilman;  
BILL BELL, Councilman; and  
VANESSA PHILLIPS, Chief Administrative  
Officer, New Castle County,

Respondents.

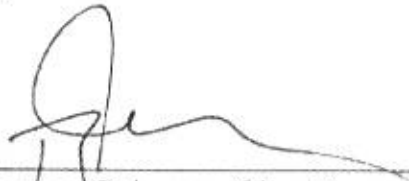
C.A. No. \_\_\_\_\_

**VERIFICATION OF THOMAS COLEMAN**

STATE of DELAWARE :  
 :  
COUNTY of NEW CASTLE :

**BEFORE ME**, an Attorney at Law of the State of Delaware, appeared Thomas Coleman, who, after being duly sworn, did depose and say as follows, to wit:

1. I am Thomas Coleman, City Manager for the City of Newark Delaware.  
I have reviewed the attached *Petition for Declaratory and Injunctive Relief*.
2. The facts and statements set forth therein are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Thomas Coleman, City Manager,  
City of Newark, Delaware

**SWORN TO AND SUBSCRIBED** before me this 12<sup>th</sup> day of August, 2019.

  
Notary Public

 (Seal)



DANIEL R. LOSCO  
THOMAS C. MARCONI  
PAUL E. BILODEAU  
GEENA KIJOMENKO GEORGE

*Of Counsel*  
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August 13, 2019

VIA: LEXIS NEXIS FILE AND SERVE

Register in Chancery  
Court of Chancery  
New Castle County Courthouse  
500 North King Street, Suite 11400  
Wilmington DE 19801

RE: *The City of Newark and George J. Clifton, Petitioners v. Matthew Meyer,  
County Executive, New Castle County, et al, Respondents,*

Dear Register in Chancery:

Please prepare and issue summons pursuant to 10 Del. C. §362 for service by the special process server D.M. Professional Services, Inc. of process and a copy of the *Verified Petition for Declarative and Injunctive Relief* upon the Respondents as follows:

Matthew Meyer, County Executive,  
New Castle County  
87 Reads Way  
New Castle, DE 19720

Karen Hartley-Nagle, President,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Kenneth R. Woods, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Dee Durham, Councilwoman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801



Janet Kilpatrick, Councilwoman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Lisa Diller, Councilwoman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

George Smiley, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Timothy Sheldon, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

David Tackett, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Vanessa Phillips,  
Chief Administrative Officer,  
New Castle County,  
87 Reads Way  
New Castle, DE 19720

Penrose Hollins, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

David Carter, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

John Cartier, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Jea P. Street, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Bill Bell, Councilman,  
New Castle County Council  
800 N. French Street, 8<sup>th</sup> Floor,  
Wilmington, DE 19801

Respectfully yours,

/s/Thomas C. Marconi  
Thomas C. Marconi, Esq. (#2761)

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 17A  
OF THE RULES OF THE COURT OF CHANCERY

EFiled: Aug 14, 2019 10:43AM EDT  
Transaction ID 64093822  
Case No. 2019-640-



The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: **The City of Newark and George J. Clifton, Petitioners vs. Matthew Meyer, County Executive, New Castle County, Karen Hartley-Nagle, President, New Castle County Council; Kenneth R. Woods, Councilman; Dee Durham, Councilwoman; Janet Kilpatrick, Councilwoman; Penrose Hollins, Councilman; Lisa Diller, Councilwoman; David Carter, Councilman; George Smiley, Councilman; John Cartier, Councilman; Timothy Sheldon, Councilman; Jea P. Street, Councilman; David Tackett, Councilman; Bill Bell, Councilman and Vanessa Phillips, Chief Administrative Officer, New Castle County.**
2. Date Filed: **August 13, 2019**
3. Name and address of counsel for plaintiff(s): **Thomas C. Marconi, Esquire (#2761)  
Paul E. Bilodeau (#2683), Losco & Marconi, P.A., 1813 N. Franklin St., Wilm. DE 19899**
4. Short statement and nature of claim asserted:  
**Petitioners seek Declaratory and Injunctive Relief pertaining to New Castle County's 2020 Revenue Ordinance and Local Service Function Budget. Petitioners allege to be in contravention of State law.**
5. Substantive field of law involved (check one):  

<input type="checkbox"/> Administrative	<input type="checkbox"/> Labor law	<input type="checkbox"/> Trusts, Wills and Estates
<input type="checkbox"/> Commercial law	<input type="checkbox"/> Real Property	<input type="checkbox"/> Consent trust petitions
<input type="checkbox"/> Constitutional law	<input type="checkbox"/> 348 Deed Restriction	<input type="checkbox"/> Partition
<input type="checkbox"/> Corporation law	<input type="checkbox"/> Zoning	<input type="checkbox"/> Rapid Arbitration (Rules 96, 97)
<input type="checkbox"/> Trade secrets/trade mark/or other intellectual property	<input checked="" type="checkbox"/> <b>Other</b>	
6. Related cases, including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills). **None.**
7. Basis of court's jurisdiction (including the citation of any statute(s) conferring jurisdiction): **10 Del. C. §341 This case involves matters and causes in equity.**
8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought. **Not Applicable.**
9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here. (If #9 is checked, a Motion to Expedite must accompany the transaction.). ☐
10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. ☐

/s/ Paul E. Bilodeau, Esquire (#2683)

Signature of Attorney of Record & Bar ID

/s/ Thomas C. Marconi, Esquire (#2761)

Signature of Attorney of Record & Bar ID