



Cullen and Dykman Represents New Jersey Legislature in Significant Decision Regarding its Power to Invalidate Administrative Rule

December 6, 2016

On December 1, 2016, the New Jersey Appellate Division rendered a decision granting all of the relief sought by the New Jersey Legislature in its petition to invalidate a Job Banding Rule adopted by the Civil Service Commission. The Commission proposed a Rule which allowed executive agencies to consolidate positions into a “job band” so that personnel could be promoted from one position to another without competitive examination. Under Article V, Section IV, Paragraph 6 of the New Jersey Constitution, the New Jersey Legislature has the power to invalidate executive rules and regulations, if the Legislature concludes that they are inconsistent with the intent of the Legislature as set forth in the applicable statutes. In this case, the New Jersey Senate and General Assembly adopted concurrent resolutions advising the Commission and Governor Christie that the Job Banding Rule was contrary to Legislative intent, and should be withdrawn. The Commission refused to eliminate the Job Banding Rule, and the Legislature proceeded to invalidate the Rule, following the procedures and powers granted to the Legislature by the State Constitution.

Despite the Legislative veto, the Commission proceeded to adopt and implement the Job Banding Rule. The Legislature appealed the Commission’s action to the Appellate Division. The Senate and General Assembly were represented by Cullen and Dykman partner Leon J. Sokol, who was assisted by partner Herbert B. Bennett. In its decision, the Appellate Division granted all of the relief sought by the Legislature, invalidating the Job Banding Rule, voiding all actions taken by the Commission to implement the Rule, and prohibiting any future implementation of the Rule. This was the first decision by a high court regarding the Legislative veto powers in the Constitution, and provided guidance to future executive agencies and Legislatures as to how to proceed. Particularly, the Court found that substantial deference must be paid by the Court to such Legislative action, which was a significant victory for the Legislature.

Practices

- Labor and Employment

Attorneys

- Leon J. Sokol