

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Counsel
Re: Effect of Vacated Election on the Reclassifying a School District
Date: October 08, 2018

MEMORANDUM

Executive Summary

In New Jersey, the members of local Boards of Education may be appointed by the mayor or chief executive officer of the municipality constituting the district.¹ Alternatively, the members of a Board of Education may be elected by the citizenry.² The process by which board members are selected may be changed using the referendum process set forth in the New Jersey statutes.³

Once the statutory requirements to place the question of reclassification on the ballot have been met, the issue is placed before the voters.⁴ The electorate may then vote “for” or “against” the reclassification initiative.⁵ Regardless of whether the initiative is accepted or rejected, the New Jersey statutes prohibit a municipality placing a similar referendum on the ballot, “year after year.”⁶ The statutes do not, however, address the impact that voided election results have on subsequent ballot initiatives to reclassify a school district.

Background

- *City of Orange Twp. Bd. of Educ. v. City of Orange Twp. (I)*

On July 6, 2016, the City Council for the City of Orange Township (“City Council” or “Defendants”) adopted a resolution that called for a referendum at its next general election.⁷ This ballot initiative asked voters to decide whether or not they wished to change the method by which the members of its Board of Education were selected.⁸ Traditionally, members of the City of Orange Township Board of Education (“Board”) were appointed by the mayor.⁹ A vote in favor of the referendum would have removed the mayoral power of appointing board members

¹ N.J.S. 18A:12-7.

² N.J.S. 18A:12-11.

³ N.J.S. 18A:9-4 and 18A:9-6.

⁴ *Id.*

⁵ *See* N.J.S. 18A:9-7.

⁶ N.J.S. 18A:9-4 to 18A:9-6. *See City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, No. L-6652-17 (Ch. Div. Oct. 20, 2017)(addressing the effect of voided election results on the reclassification process). *See generally* N.J.S. 18A:9-5 (forbidding a clerk from placing a public question on the ballot if a similar question was submitted at an election within the previous four years).

⁷ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. 310, 315 (Law Div. 2017).

⁸ *Id.*

⁹ *Id.*

and vested this power with the citizenry.¹⁰ Pursuant to resolution 125-2016, the referendum appeared on the November 08, 2016 ballot.¹¹ The public question regarding this change was accompanied by an interpretive statement.¹² Prior to the election, the Board took issue with both the public question and the interpretive statement.

The Board alleged that the governing bodies had placed a statutorily deficient public question and a dubious interpretive statement on the ballot in an attempt to reclassify the school district.¹³ In an attempt to restrain the City Council from taking action to convert the City's school district from a Type I school district to a Type II school district, the Board ultimately filed a verified complaint and order to show cause in the Superior Court.¹⁴

In response to the action filed by the Board, the City maintained that, "there was nothing procedurally or substantively improper about how the municipal question and interpretive statement were presented and voted on [by the electorate]."¹⁵

A municipal public question and the interpretive statement may not mislead the voters.¹⁶ After reviewing both the public question and the interpretive statement, the trial court determined each defective.¹⁷ The Court observed that, "...the true purpose of this municipal public question was not set forth in adequate detail so as to allow voters in the City to be sufficiently informed." The Court further noted, "... the interpretive statement failed to aid the voter in understanding the flawed municipal public question."¹⁸

On April 24, 2017, the Court granted the Board's request for injunctive relief.¹⁹ The Court opined that any change from a Type I to a Type II school district must be done, "...with

¹⁰ *Id.* School districts are classified as either Type I (appointed) or Type II (elected) pursuant to N.J.S. 18A:9-1. *See also* N.J.S. 18A:9-2 and 18A:9-3.

¹¹ *Id.*

¹² *Id.*

¹³ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. 310 (Law Div. 2017). The Board of Education also maintained that the interpretive statement: impermissibly urged the passage of the City's resolution; it was not approved or contained within a resolution passed by the City Council; and, that it did not explain to voters the potential consequences of their vote. An in-depth review of these arguments exceeds the scope of this memorandum. The Court's treatment of these issues may be found at *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. at 325.

¹⁴ *Id.*

¹⁵ *Id.* Additionally, the City and City Council argued that the Board of Education's request for relief was time-barred. An in-depth review of this argument exceeds the scope of this memorandum. The Court's treatment of this issue may be found at *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. at 318.

¹⁶ N.J.S. 19:3-6. *See also, City of N. Wildwood v. N. Wildwood Taxpayers' Ass'n*, 338 N.J. Super. 155 (Law Div. 2000)(holding that "[i]nterpretive statements [...] must be designed in such a way as to help the voter understand more about the issue than disclosed in the municipal public question for purposes of aiding the voter in his or her decision), and *Camden Cty. Bd. of Chosen Freeholders v. Keating*, 193 N.J. Super. 100, 110-11 (Law Div. 1983)(holding that interpretive statements which merely repeat the language of the question and which are "one-sided" are legally deficient.)

¹⁷ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. at 328.

¹⁸ *Id.*

¹⁹ *Id.*

strict adherence to statutory parameters, and with careful attention paid to ensure compliance with the appropriate legal process.”²⁰ The Court’s ruling voided the electorate’s decision to change from district that appointed its school board to district that elected its school board.²¹

- *City of Orange Twp. Bd. of Educ. v. City of Orange Twp. (II)*

In August of 2017, group calling themselves the “Committee for an Elected School Board” (“Committee” or “Defendants”) petitioned the City Clerk to place the referendum back on the ballot for the November 7, 2017 General Election.²² After reviewing the Committee’s petition, the City Clerk certified the Committee’s petition to be sufficient and valid.²³ The City Clerk then forwarded the petition to the County Clerk for inclusion on the general ballot.²⁴

Several days before the ballot was to be printed, the Board learned of the second referendum to change the structure of the school district.²⁵ In response to the Defendant’s petition, the Board filed a “new” Order to Show Cause with Temporary Restraints.²⁶ The Board’s principal argument was that N.J.S.18A:9-4 and 18A:9-5 prohibits a referendum for reclassification from appearing on the ballot year after year.²⁷

Analysis

In *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.* the trial court examined the impact of an “effectively vacated election” on a municipalities’ subsequent ability to reclassify their school district in the next election. The question of reclassification, as set forth in N.J.S. 18A:9-4, must be,

submitted to the legal voters of such district whenever the governing body of the municipality ... or the board of education... shall by resolution so direct, or whenever a petition, signed by not less than 15% of the number of legally qualified voters who voted in such district at the last preceding general election held for the election of all of the members of the general assembly, shall be filed with the clerk of such municipality.

The ability of the governing body, the school board, and the citizenry to reclassify its board of education is not without its limitations.

²⁰ *Id.*

²¹ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, No. L-6652-17 at 3 (Ch. Div. Oct. 20, 2017).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 5.

After the issue of reclassifying a school district has appeared on a ballot, the statute sets forth the amount of time that must elapse before the subject may again be placed before the voters.²⁸ The statute provides, in relevant part, that “[n]o resolution may be adopted and no petition may be filed for the submission of the question of acceptance [of reclassification...] within four years after an election shall have been held pursuant to any resolution adopted, or petition filed, pursuant to this section...”²⁹

The Board argued that a plain reading of the statute suggested that once a vote on reclassification has occurred, another vote cannot take place for another four years.³⁰ Furthermore, the Board maintained that “...a referendum vote appearing on a ballot is enough to trigger [the prohibition set forth in] N.J.S. 18A:9-4.”³¹ The trial court, however, refused to adopt such reading of the statute.

The court observed that, “the statute does not specifically contemplate [the ramifications] of an effectively vacated election.”³² In the absence of any statutory guidance, the court turned to an examination of the phrase “[...] *after an election shall have been held...*”³³ The trial court judge found that because it had voided the previous election results that these results were “rendered meaningless” and that the election “was not actually held.”³⁴ The Court said that, “[b]ased on statutory construction and this Court’s [prior] holding, the referendum on reclassification need not be delayed four years before appearing on the ballot.”³⁵ The City’s motion for dismissal was ultimately granted and the School Board’s Order to Show Cause was denied.³⁶

Conclusion

Presently, New Jersey’s school board reclassification statutes do not address the effect of an effectively vacated elections on future reclassification referenda. Staff seeks authorization from the Commission to conduct additional research and outreach, to determine whether modification of the relevant statutory language would be of assistance in furthering the purpose of reclassification statutes and avoiding future litigation of this issue.

²⁸ N.J.S. 18A:9-4.

²⁹ *Id.* (Emphasis added). See N.J.S. 18A:9-6 for the requirements of reclassifying a Type II school district and the amount of time that must pass before the reclassification issue can be again placed before the voters.

³⁰ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, No. L-6652-17 at 5.

³¹ *Id.*

³² *Id.* at 6.

³³ *Id.* at 5.

³⁴ *Id.*

³⁵ *Id.* at 6.

³⁶ *Id.* at 6.