

To: New Jersey Law Revision Commission
From: Laura C. Tharney, Executive Director
Re: Project Recommended for Conclusion
Date: September 11, 2023

MEMORANDUM

Pursuant to the direction provided by the Commission in 2022, Staff recently examined the full slate of Commission projects and identified a project on which work was begun in 2019 and on which the Commission may want to conclude its work.

As previously discussed in memoranda recommending the conclusion of other projects, the fact that the Commission concludes work at this time does not preclude it from resuming work in the same area, or a related area, in the future.

Project Proposed for Conclusion

Notice by Publication for Municipal Action

In July 2019, the Commission authorized a project regarding the statutes governing notice by publication for municipalities. Notice by publication statutes mandate that a newspaper in which a notice may appear must be published and circulated either within the municipality, or in the county, in which the municipality is located. The statutes' intent is to notify the largest number of people regarding municipal action.

Historically, "publication" referred to the actual location where the newspaper was printed and circulated to the public. Developments in the publishing industry, however, changed the manner in which newspapers are published, distributed, and read. This raises issues regarding how municipalities may comply with the statutory requirements.

At the July 2019 meeting, Commissioner Rainone advised that he brought this issue to the attention of the Commission after participating in litigation involving a township in Middlesex County and its alleged failure to publish an ordinance and a resolution in accordance with the statute. According to Commissioner Rainone, the township was one of several municipalities affected by the absence of a newspaper that is printed within the county or in an adjoining county. After a detailed review of the municipal publication statutes, Commissioner Rainone concluded that it may be "impossible" for some municipalities in the State to comply with the publication statutes. If the actions taken by these municipalities were deemed void as a result, they would be unable to act by ordinance or resolution.

Thomas J. Cafferty, a Director at Gibbons Law Firm, was present at the July 2019 Commission meeting and he informed the Commission that he represented the New Jersey Press Association. Also present was Richard Vezza, an officer in the New Jersey Press Association and

the publisher of The Star Ledger. Mr. Cafferty provided some background and explanatory information and noted that there is a large well-developed body of case law in this area, which meant that any proposed changes to this area would not likely be simple or straightforward. Mr. Vezza advised that New Jersey has 17 daily newspapers and 90 weekly newspapers.

Also in attendance at the July 2019 meeting were Steven Lenox, owner, publisher, and editor of “TapInto Paterson,” and Robert Rakossay, the owner, publisher, and editor of “TapInto East Brunswick.” The TapInto sources were two of a series of online, local news sources in operation in New Jersey, which Mr. Lenox suggested should be allowed to participate in the public notification process.

Even when this project was initially considered, the Commission acknowledged that the Legislature had, in the past, debated whether print publications are the proper place for public notices.

When the project was initially considered and authorized, the Chairman of the Commission stated that the Commission would not address the policy determination concerning the medium in which notices appear. It was noted that the necessary first step for the Commission would be to assess the magnitude of the problem. The goal, when the project was authorized, was for Staff to conduct additional research and work with knowledgeable commenters familiar with the industry to consider whether and how updating the statute would facilitate compliance with the notice provision.

There are presently three bills that are pending that concern this issue. One of them, which has been introduced in each legislative session since 2016, is the “Electronic Publication of Legal Notices Act” (SB 2207), and it would permit publication of legal notices by “government agencies and persons” to be made on “official government notice websites instead of newspapers.” The other pending bills (AB 5435/SB 3466) focus specifically on state and municipal entities and expand the existing law to permit publication of notice in a “qualified newspaper” regardless of other notice requirements, amending statutes in Title 35.

Consistent with Commission practice, in deference to the ongoing legislative activity, Staff has not actively worked in this area. In addition, the policy issues recognized by the Commission during its initial consideration of the project add an additional layer of complexity to any possible work in this area. Finally, although this project focuses on an important issue, it does not appear that the Commission will have the resources to devote to a project of this scope in the near future. As a result, Staff seeks authorization to conclude work in this area at this time, with the possibility of resuming work in the future if time and staffing permit.