



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Addressing the Effect of a Voided Election on Future Ballot Initiatives N.J.S. 18A:9-4 *et. seq.*

September 09, 2019

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Please consult the New Jersey statutes to determine the law of the State.

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Executive Summary

In New Jersey, the members of local Boards of Education may be appointed by the mayor or the municipalities' chief executive officer.¹ Alternatively, the members of a Board of Education may be elected by the citizenry.² The process by which board members are selected in a given municipality 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

New Jersey's statutes, however, do not address the impact of voided election results upon a subsequent ballot initiative to reclassify a school district. Updating the reclassification statutes would eliminate the ambiguity that results when election results are voided.

Background

As originally enacted in 1967, the procedure to commence a school board reclassification initiative was set forth in N.J.S. 18A:9-4.⁷ Pursuant to that incarnation of the statute, the question of reclassification was to 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....

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 This issue addressed in this Memorandum deals specifically with the issue of reclassification raised in the context of N.J.S. 18A:9-4. The topic of school board reclassification, however, is also be found in N.J.S. 18A:9-5 and N.J.S. 18A:9-6. This subject-matter, and recommended modifications to these statutes, is dealt with in the Appendix to this Report, *infra*.

Absent from this statute, however, was any limitation on the number of consecutive years that the question of reclassification could appear on the ballot. Without any statutory indication to the contrary, the question could have theoretically been placed on the ballot each and every year.

Thirty-six years later, the Legislature recognized the burden that an annually reoccurring initiative placed upon the electorate.⁸ The Senate Education Committee (“Committee”), reported favorably on amending the statute and noted, “[t]his bill would prevent questions concerning the reclassification of school districts from appointed (Type I) to elected school boards (Type II), or vice versa, **from annually recurring on the ballot.**”⁹ The committee statement made it clear that, “[u]nder the bill, the question [of reclassification] **could be asked only once every five years,** similar to the frequency that a question on a municipal charter study may appear on the ballot.”¹⁰

In 2003, the ability of a governing body, a school board, or the citizenry to reclassify its board of education was no longer without a limitation.¹¹ Since its enactment, 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....”¹² It would be fourteen years before the statute would be challenged, this time in the context of “voided” election results.

As amended in 2003, the school board reclassification statute did not, however, anticipate the effect that voided election results on such a ballot initiatives.

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 municipality’s subsequent ability to reclassify their school district in the next election.

Analysis

- *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.¹³ 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.¹⁴ Traditionally, members of the City of

⁸ See Senate Comm. Stmt., 210th Leg., S. 2357 (June 9, 2003).

⁹ *Id.* Emphasis added.

¹⁰ *Id.* Emphasis added.

¹¹ N.J.S. 18A:9-4.

¹² *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.

¹³ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. 310, 315 (Law Div. 2017).

¹⁴ *Id.*

Orange Township Board of Education (“Board”) were appointed by the mayor.¹⁵ A vote in favor of the referendum would have removed the mayoral power of appointing board members and vested this power with the citizenry.¹⁶ Pursuant to Resolution #125-2016, the referendum appeared on the November 08, 2016 ballot.¹⁷ The public question regarding this change was accompanied by an interpretive statement.¹⁸ 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.¹⁹ 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 filed a verified complaint and order to show cause in the Superior Court.²⁰

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].”²¹

A municipal public question and the interpretive statement may not mislead the voters.²² After reviewing both the public question and the interpretive statement, the trial court determined that each was defective.²³ 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.”²⁴

¹⁵ *Id.*

¹⁶ *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.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *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.

²⁰ *Id.*

²¹ *Id.* Additionally, both the City and the 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.

²² 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).

²³ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. at 328.

²⁴ *Id.*

On April 24, 2017, the Court granted the Board’s request for injunctive relief.²⁵ The Court opined that any change from a Type I to a Type II school district must be done “...with strict adherence to statutory parameters, and with careful attention paid to ensure compliance with the appropriate legal process.”²⁶ 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.²⁷

• *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.²⁸ After reviewing the Committee’s petition, the City Clerk certified the Committee’s petition to be sufficient and valid.²⁹ The City Clerk then forwarded the petition to the County Clerk for inclusion on the general ballot.³⁰

Several days before the ballot was to be printed, the Board learned of the second referendum to change the method by which the school board members were selected.³¹ In response to the Defendant’s petition, the Board filed a “new” Order to Show Cause with Temporary Restraints.³² The Board’s principal argument was that N.J.S.18A:9-4 and 18A:9-5 prohibit a referendum for reclassification from appearing on the ballot year after year.³³

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 four years.³⁴ 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.”³⁵ 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.”³⁶ In the absence of any statutory guidance, the Court turned to an examination of the phrase “[...] *after an election shall have been held...*”³⁷ The Court found that because it had voided the previous election results that these results were “rendered meaningless” and that the election “was not actually held.”³⁸ The Court said that, “[b]ased on

²⁵ *Id.*

²⁶ *Id.*

²⁷ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, No. L-6652-17 at 3 (Ch. Div. Oct. 20, 2017).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 5.

³⁴ *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, No. L-6652-17 at 5.

³⁵ *Id.*

³⁶ *Id.* at 6.

³⁷ *Id.* at 5.

³⁸ *Id.*

statutory construction and this Court’s [prior] holding, the referendum on reclassification need not be delayed four years before appearing on the ballot.”³⁹ The City’s motion for dismissal was ultimately granted and the School Board’s Order to Show Cause was denied.⁴⁰

Outreach

In connection with this Report, Staff sought comments from several knowledgeable individuals and organizations. These included: the Division of Elections; the New Jersey League of Municipalities; the Department of Education; the New Jersey Education Association; the Division of Law, Education and Higher Education; the Election Law Enforcement Commission; the Department of Community Affairs; the New Jersey Election Commission; New Jersey School Boards Association; New Jersey State Bar Association – Local Government Law Section; the Municipal Clerk’s Association of New Jersey; and a municipal attorney.

• Support

The New Jersey Education Association (“NJEA”) replied with support for this project “on the basis that the modified language is in accordance with the Court’s holding in *City of Orange Twp. Bd. of Ed. v. City of Orange Twp.*, No. L-6652-17 (Ch. Div. Oct. 20, 2017).”⁴¹ In addition, the NJEA noted that the modifications “support the underlying purpose of the statutory provisions in that the four-year time limit was clearly intended to apply only to valid elections and not to elections that have been voided by the Courts....”⁴² Finally, the NJEA opined that “[t]he proposed amendments also promote a sound public policy goal by fostering voter participation in the school board election process.”⁴³

No objection was received to the proposed modifications included in the Report.

Conclusion

To this date, New Jersey’s statutes do not address the impact of voided election results on a subsequent ballot initiative to reclassify a school district. Updating the reclassification statutes could eliminate the ambiguity that results when election results are voided.

The Appendix on the following pages sets forth proposed changes to the school-board reclassification statutes.

³⁹ *Id.* at 6.

⁴⁰ *Id.*

⁴¹ Letter from Aileen M. O’Driscoll, Esq., Managing Attorney, NJEA at *3 (June 18, 2019) (supporting the recommendations made by the NJLRC).

⁴² *Id.*

⁴³ *Id.*

Appendix

The full text of each statute, including proposed modifications (proposed additions are shown with underline, and proposed deletions with ~~strikethrough~~), follows:

18A:9-4. Type I districts; reclassification; resolution or petition for submission

(a) The question of the acceptance of section 18A:9-2 of this title, in any local school district governed by section 18A:9-3 of this title, except a consolidated school district, or of the acceptance of section 18A:9-3 of this title in any local school district governed by section 18A:9-2 of this title, shall be submitted to the legal voters of such district whenever the governing body of the municipality constituting such district or the board of education of any type I districts, 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.

(b) No resolution may be adopted and no petition may be filed for the submission of the question of acceptance of N.J.S.18A:9-2 or N.J.S.18A:9-3, as the case may be, within four years after an election shall have been held pursuant to any resolution adopted, or petition filed, pursuant to this section or N.J.S.18A:9-6.

(c) For purposes of this section, if a court determines the results of an election to be void, that election shall not be considered to have been held.

Credits: L.1967, c. 271, § 18A:9-4, eff. Jan. 11, 1968. Amended by L.2003, c. 102, § 1, eff. June 30, 2003.

18A:9-5. Type I districts; submission of reclassification question

The clerk of the municipality shall in either case cause said question to be submitted at the next municipal or general election which will be held in the municipality following the expiration of 35 days from the date of the adoption of the resolution or the filing of the petition, whichever shall first occur, except that the clerk shall not cause the question to be submitted if a similar question was submitted at an election within the previous four years unless a court determined the results of the earlier election to be void.

Credits: L.1967, c. 271, § 18A:9-5, eff. Jan. 11, 1968. Amended by L.2003, c. 102, § 2, eff. June 30, 2003.

18A:9-6. Type II districts; reclassification; resolution or petition; submission

(a) Except as provided below, if the board of education of a type II local school district shall so determine by resolution, or if a petition is filed with the board requesting the submission of the question to the voters, signed by 15% or more of the number of legally qualified voters who voted in the district at the last preceding general election held for the election of all of the members of the general assembly, the question shall be submitted to the voters of the district at the next annual school election of the district which will be held at least 15 days after the adoption of the resolution or the filing of the petition but if in the petition it is requested that the question be submitted at a special school election and the first annual school election to be held in the district after the petition is filed will be held less than 20 days or more than 50 days thereafter, the board shall forthwith call a special school election in the district, for the submission of the question, to be held not more than 50 days after the filing of the petition.

(b) No resolution may be adopted and no petition may be filed for the submission of the question of acceptance of N.J.S.18A:9-2 within four years after an election shall have been held pursuant to any resolution adopted, or petition filed, pursuant to this section or N.J.S.18A:9-4.

(c) For purposes of this section, if a court determines the results of an election to be void, that election shall not be considered to have been held.

Credits: L.1967, c. 271, § 18A:9-6, eff. Jan. 11, 1968. Amended by L.2003, c. 102, § 3, eff. June 30, 2003.