

To: New Jersey Law Revision Commission
From: Jordan Goldberg
Re: Elimination of Special Election Clause in N.J.S. § 40A:4-45.14
Date: September 9, 2013

MEMORANDUM

Introduction

Commission Staff monitors case law in the State to identify decisions in which the court calls for Legislative review or action. This memorandum results from one such decision and seeks Commission authorization for a project modifying N.J.S. § 40A:4-45.14 to eliminate extraneous language characterized as having “no discernible meaning” by the Appellate Division in *Roseff et al. v. Byram Township et al.*, --- A. 3d ---, No. A-5479-11T3, 2013 WL 3849886 at *8 (N.J. Super. Ct. App. Div. July 10, 2013).

In *Roseff*, the Appellate Division addressed the legal question of whether a municipal budget ordinance enacted under N.J.S. 40A:4-45.14 is subject to the type of local referenda normally permissible under N.J.S. 40:69A-185. Such referenda are citizen-initiated and are permitted in many situations as a mechanism for seeking voter repeal or approval of ordinances passed by municipal governments. *See* Michael A. Panea, *Initiative, Referendum, and Recall in New Jersey*, 208 N. J. Lawyer 44 (April 2001). The Court concluded that municipal budgets are not subject to referenda, in part because such budgets go into effect immediately while all non-exempt municipal ordinances are held in abeyance for twenty days in order to allow for referendum petitions to be filed. *Roseff* at *5.

In analyzing the legislative intent behind the two statutes at issue in the case, the Court briefly addressed another restriction on local budget referenda found in N.J.S. 40A:4-45.14:

In any year for which an ordinance is adopted by a municipality pursuant to this section, no referendum shall be held in that municipality pursuant to subsection i. of section 3 of P.L.1976, c. 68 (C.40A:4-45.3); provided that a municipality may hold a special election if required by law pursuant to that subsection

The Court found that this language was not relevant to the question at issue in the case. *Roseff* at *7. However, in the course of reviewing the legislative history behind this statute, the Court determined that the last line of this subsection no longer has any meaning at all as a result of changes to the statute in 1990. *Id.* at *8. Those changes and the statutory history are explained below.

Statutory History

N.J.S. 40A:4-45.3, originally enacted in 1976, prohibits localities from increasing their budgets more than a statutorily-prescribed percentage each year, but exempts certain types of expenditures from the statutory cap including any amount approved by referendum. N.J.S.

40A:4-45.3(i). N.J.S. 40:4-45.14 provides an alternative mechanism to increase local budgets about 1% above the normally prescribed cap through ordinance or referenda as long as certain conditions are fulfilled. In *Roseff*, the Court interpreted the relationship between the two statutes as indicating that the Legislature has granted municipal governments the ability to increase their own budgets 1% above the cap without voter approval, but required voter approval for any increase above 1%. *Roseff* at *6; see also *City of Ocean City v. Somerville Eyeglasses*, 958 A.2d 465 (N.J. Sup. Ct. App. Div. 2008) (“Other than allowing for exemptions, the Legislature also permits a municipality the option of exceeding the budget cap by 1% by enacting an ordinance that is “approved by a majority vote of the full membership of the governing body.” N.J.S. 40A:4-45.14. Thereafter, a municipality may exceed the 3.5% spending cap only by way of referendum. N.J.S. 40A:4-45.3(i).”).

In 1987, the Legislature amended N.J.S. 40A:4-45.3(i) so that it then exempted from the cap “[a]ny amount approved by any referendum or any amount expended to conduct a special election required by law to be held at a time other than the time of a general election or regular municipal election, as appropriate.” See N.J.S. 40A:4-45.3. At the same time, the legislature amended N.J.S. 40A:4-45.14 to add the language at issue, apparently so that municipalities that were required by law to have a special election (and to spend the funds to pay for that election) would not be thereby prevented from increasing their budgets 1% above the cap as permitted by that statute.¹

In 1990, the Legislature again amended N.J.S. 40A:4-45.3. The Assembly Committee statement related to the bill noted that “many exceptions to the local budget caps . . . have found their way into the statutes through the years” and stated its “intent . . . to reduce the rate of increase of local government property taxes” by removing all but necessary exemptions to the cap. NEW JERSEY ASSEMBLY COUNTY GOVERNMENT COMMITTEE STATEMENT REGARDING BILL NOS. 3601 AND 3298, 1990 NJ Sess. Law Serv. 89 (West). Among the amendments, the Legislature removed the exemption for special elections, so that municipal funds spent on special elections are no longer exempted from the budget cap. However, the Legislature neglected to remove the accompanying language from N.J.S. 40A:4-45.14. In *Roseff*, the Court noted that “in light of this legislative history, the special election language left in N.J.S. 40A:4-45.14 . . . has no discernible meaning at all because subsection (i) of N.J.S. 40A:4-45.3 no longer addresses special elections.” *Roseff* at *8.

Conclusion

Although this appears to be the first case in which this language has been the cause of any confusion or interpretation, the Court saw the need to analyze the language in order to ensure that this text did not change the result in the case. In so doing, the Court noted that the failure by the Legislature to amend the language has resulted in meaningless language remaining in the statute. Therefore, Staff seeks approval to begin a project that would research the legislative

¹ Based on the legislative history thus far located, it is not clear why the Legislature believed that this sentence was necessary to protect the municipality’s ability to have a special election and still be permitted to increase the budget by 1% under N.J.S.A. 40A:4-45.14. If the Commission approves this project, this would be an area requiring further research.

history behind the two statutes to confirm the Court's conclusion and then recommend that this language be eliminated in order to avoid future confusion in cases related to but not governed by that now-obsolete language