

To: New Jersey Law Revision Commission
From: Mark Ygarza
Re: Interpretive Statement; N.J.S. 19:3-6
Date: November 08, 2019

MEMORANDUM

Executive Summary

As of this date, N.J.S. 19:3-6 does not designate which municipal actor has the authority to draft and submit an interpretive statement with a referendum ballot. In *Desanctis v. Borough of Belmar*,¹ the Appellate Division considered whether the interpretive statement that accompanies a public ballot question must be drafted by the governing body.

The ambiguity created by the absence of a designated individual authorized to draft such statements resulted in the research summary that follows.

Relevant Statute

The relevant portion of N.J.S. 19:3-6 states the following:

[...] In [the] event that in any statute the public question to be voted upon is so stated as not clearly to set forth the true purpose of the matter being voted upon and no provision is made in said statute for presenting the same in simple language or printing upon the ballots a brief statement interpreting the same, there may be added on the ballots to be used in voting upon the question, a brief statement interpreting the same and setting forth the true purpose of the matter being voted upon in addition to the statement of the public question required by the statute itself. [...]

Background

In the 1930's the Legislature addressed who would be responsible for writing a summary statement regarding a State constitutional question for a referendum. N.J.S. 19:3-6 provides that any public question to be voted on by referendum, may have a brief statement interpreting the question so the public may know the true purpose of that question.² The purpose of this statement was to ensure that the public was able to discern the true purpose of that question. As originally drafted, N.J.S. 19:3-6, vested the Attorney General with the authority to create a "summary statement in order to inform the voters of the effect that the adoption or rejection of the question will have on [...] the State Constitution."³

In 2015, the mayor and the council of Belmar adopted an ordinance appropriating \$4.1 million dollars for the construction of a pavilion, and authorizing the issuance of bonds and notes

¹ *Desanctis v. Borough of Belmar*, 455 N.J. Super. 316 (App. Div. 2018).

² N.J.S. 19:3-6.

³ *Id.* at 325.

to finance part of the construction.⁴ Belmar voters filed a protest petition seeking to have a referendum on the ordinance.⁵ The Borough Administrator drafted a interpretive statement for the proposed ordinance that was to be voted on during the referendum.⁶ Although the Administrator circulated the interpretive statement among the borough attorney, council, and mayor, the statement was never submitted to a vote by the mayor and governing body.⁷

The Plaintiffs filed suit to invalidate the interpretive statement because “it was never voted on by the mayor and council, thereby depriving plaintiffs and the public an opportunity to comment on and object to its content, which contained ‘inaccurate, misleading and extraneous information,’ presenting another ground for invalidation.”⁸

Analysis

The Appellate Division examined statutes related to N.J.S. 19:3-6⁹ and concluded that the Legislature must have also intended for the Attorney General to have the vested power to make a “brief summary statement” for other laws that do not fall under the category of a change to the state constitution.¹⁰

The Appellate Division examined N.J.S. 19:3-6 as well as its predecessor¹¹, to determine whether the trial court correctly held that an interpretive statement submitted by the borough administrator, without a resolution by the council and mayor, is invalid. It determined that an interpretive statement must be passed by resolution or ordinance voted upon by the governing body of the municipality.

The Appellate Division also examined whether the trial court’s decision was based on principles that are “well established and consistent with the longstanding tradition[s] of our State and our Country to ensure fairness of our election system.”¹² The Court reviewed both N.J.S. 19:3-6 and N.J.S. 19:14-31.¹³ The Appellate Division did not find any legislative intent to vest a borough administrator or municipal attorney with the authority to author and submit an interpretive statement with a referendum ballot.¹⁴ The Court found that the Attorney General may do so when an interpretive statement is mandated, but that authority is derived from the statutory framework pertinent only to that scenario.¹⁵

The Appellate Division determined that the statutory scheme weighs against allowing a

⁴ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 321.

⁵ *Id.*

⁶ *Id.* at 322.

⁷ *Id.*

⁸ *Id.* at 323.

⁹ See L. 1930, c. 187.

¹⁰ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 325.

¹¹ See L. 1930, c. 187.

¹² *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 323.

¹³ *Id.* at 326.

¹⁴ *Id.*

¹⁵ *Id.*

mayor and council to outsource an interpretive statement.¹⁶ Pursuant to the Home Rule Act¹⁷, a clerk is required to submit a petition, once it is found sufficient, “to the governing body of the municipality without delay [so that they may approve it through a vote].”¹⁸ Various cases dealing with municipal actions make it clear that a “board or body can act only by ordinance or resolution; these are the alternative methods. Any action of the body which does not rise to the dignity of an ordinance, is a resolution.”¹⁹

The enactment of the Home Rule Act, and the common law addressing municipal actions, led the Appellate Division to conclude that “when the Legislature provided the option for an interpretive statement [...] [the] interpretive statement had to be approved by the mayor and council.”²⁰ This procedure promotes government transparency which is one aim derived from the Open Public Meetings Act.^{21, 22} Having reviewed the referendum laws, the Appellate Division “[did] not see that submission of an interpretive statement to a county clerk without open approval of the governing body [was] consonant with the public spirit of the referendum laws.”²³

The Appellate Division examined *Gormley v. Lan* and noted that the public should have the opportunity to “object or propose alternative language” to the wording of the interpretive statement.²⁴ The final wording, however, should be given to the governing body, subject to “the requirement that it fairly interpret the public question and set forth its true purpose [of the ordinance].”²⁵

In the absence of statutory guidance, it is possible that other municipalities may allow individuals who are not members of the governing body to draft the interpretive statements for ballot initiatives. Municipalities may be better informed if the law clarified that a resolution by a governing body was a requirement.

Pending Legislation

Staff reviewed A281, which seeks to “require interpretive statements of State general obligation bond act public questions to include certain fiscal information.”²⁶ The bill does not address who is responsible for drafting the interpretive statement nor does it address whether

¹⁶ *Id.*

¹⁷ See Home Rule Act of 1917, now N.J.S. 40:42-1 *et seq.*, which requires a clerk to submit a petition, once it is found sufficient, to the governing body of the municipality without delay, *see also* N.J.S. 40:49–27b, and vests the governing body with the authority to call a special election therefore.

¹⁸ See N.J.S. 40:49–27b.

¹⁹ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 327.

²⁰ *Id.*

²¹ *Id.*

²² See *Polillo v. Deane*, 74 N.J. 562, (1977) (“acknowledging the importance of allowing voters: to follow the progress of public bodies that can “influence in a material way a person's vote”; and to “have access to the information considered by [such bodies] in arriving at [a] decision.”)

²³ See *Tumpson v. Farina*, 218 N.J. 467 (2014).

²⁴ *Id.* at 328.

²⁵ *Id.*

²⁶ *Id.*

the interpretive statement should be approved by a governing body.

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether N.J.S. 19:3-6 should be amended to clarify the statute based on the determination of the Court.