



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report to Clarify N.J.S. 19:3-6 Relating to Interpretive Statements

December 7, 2020

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

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

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Executive Summary¹

N.J.S. 19:3-6 does not specify which municipal actor has the authority to draft and submit an interpretive statement with a referendum ballot. In *Desanctis v. Borough of Belmar*,² the Appellate Division considered whether the interpretive statement that accompanies a public ballot question must be drafted by the governing body.

The Appellate Division determined that the governing body must approve the final wording of the interpretive statement, subject to “the requirement that it fairly interpret the public question and set forth its true purpose.”³

The Commission recommends several modifications to the current interpretive statement statute. First, to clarify that the interpretive statement must be approved by the governing body and that it fairly and accurately reflects the ballot question presented to the voters. Next, to make clear that approval of any interpretive statement shall not be unreasonably withheld. Finally, to modify the phrase “true purpose” so that voters have a better understanding of the consequences and scope of their vote for a public question.

Relevant Statute

N.J.S. 19:3-6 states, in pertinent part, that:

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.

¹ Preliminary work on this Report was done by Mark Ygarza, Legislative Fellow to the New Jersey Law Revision Commission during his tenure with the Commission.

² *Desanctis v. Borough of Belmar*, 455 N.J. Super. 316 (App. Div. 2018).

³ *Id.* at 329.

Background

N.J.S. 19:3-6 provides for the inclusion of a brief statement interpreting a public question under a variety of circumstances so that the public may understand and know the true purpose of that question.⁴

In 2015, the Mayor and Council of Belmar adopted an ordinance appropriating \$4.1 million for the construction of a pavilion, and authorizing the issuance of bonds and notes to finance part of the construction.⁵ A group of Belmar voters filed a protest petition seeking to have a referendum on the ordinance.⁶ The Borough Administrator drafted an interpretive statement for the proposed ordinance to be voted on.⁷ The Administrator circulated the interpretive statement to the Borough Attorney, Council, and Mayor, but it was never submitted to a vote by the Mayor and governing body.⁸

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.”⁹

Analysis

The Appellate Division examined N.J.S. 19:3-6 as well as its predecessor statute¹⁰, to determine whether an interpretive statement submitted by the Borough Administrator, without a resolution by the Council and Mayor, was valid. Reversing the trial court, the Appellate Division determined that an interpretive statement must be passed by resolution or ordinance voted upon by the governing body of the municipality.¹¹

To ensure fairness in elections New Jersey adheres to the well-recognized and long standing traditions established throughout the State’s history.¹² The Court reviewed both N.J.S. 19:3-6 and N.J.S. 19:14-31 and did not find any legislative intent to vest a borough administrator or municipal attorney with the authority to prepare and submit an interpretive statement with a

⁴ N.J.S. 19:3-6.

⁵ *Id.* at 321.

⁶ *Id.*

⁷ *Id.* at 322.

⁸ *Id.*

⁹ *Id.* at 323.

¹⁰ *See* L. 1930, c. 187.

¹¹ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 326.

¹² *Id.* at 323.

referendum ballot.¹³ The Attorney General may do so under limited circumstances, but that authority was deemed not applicable in this case.¹⁴

The Appellate Division determined that the statutory scheme weighs against allowing a mayor and council to ‘outsource’ the approval of an interpretive statement.¹⁵ Pursuant to the Home Rule Act¹⁶, 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].”¹⁷ 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.”¹⁸

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.”¹⁹ This procedure promotes government transparency which is one aim of the Open Public Meetings Act.^{20, 21} 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.”²²

Having examined *Gormley v. Lan*, the Court noted that the public should have the opportunity to “object or propose alternative language” to the wording of the interpretive statement.²³ Responsibility for the final wording, however, rests with the governing body, subject to “the requirement that it fairly interpret the public question and set forth its true purpose [of the ordinance].”²⁴

¹³ *Id.* at 326.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 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.

¹⁷ See N.J.S. 40:49–27b.

¹⁸ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 327.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 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.”)

²² See *Tumpson v. Farina*, 218 N.J. 467 (2014).

²³ *Desanctis v. Borough of Belmar*, 455 N.J. Super. at 329.

²⁴ *Id.*

Pending Bills

Introduced during the 2020 legislative session, A479 seeks to “require interpretive statements of State general obligation bond act public questions to include certain fiscal information.”²⁵ This bill does not address who is responsible for drafting the interpretive statement nor does it address whether the interpretive statement should be approved by a governing body.

Outreach

In connection with this Report, Staff sought comments from several knowledgeable individuals and organizations. These included: The New Jersey League of Municipalities; the New Jersey Association of Counties; the leadership of the Local Government Section of the New Jersey State Bar Association; the Municipal Clerk Association; and each of the twenty-one County Counsel Offices. In addition, members of the public were invited to view this report on the NLRC website.

During the comment period, no objections were received to the modifications proposed by the Commission.

Conclusion

N.J.S. 19:3-6 does not designate the municipal actor with authority to draft and submit an interpretive statement with a referendum ballot. In an effort to clarify the statute for practitioners, the general public, and municipalities, the following pages propose modifications to the language for N.J.S. 19:3-6 consistent with the Court’s determination in *Desanctis v. Borough of Belmar* and as requested by the Commission.

²⁵ See A.B. 479, 2020 Leg., 219th Sess. (N.J. 2020).

Appendix

The proposed modifications (shown with ~~striketrough~~, and underlining), follow:

N.J.S. 19:3-6. Form of public question; when question deemed approved; “legal voters”

a. (1) Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter.

(2) The printed phrasing of ~~said~~ the question on the ballots shall clearly ~~set forth the true purpose of the matter being voted upon and plainly state the question being posed, in order to assist the public in understanding its scope and impact.~~

b. Where the question concerns any ~~amendment to~~:

(1) ~~Amendment to the State Constitution, or any act or statute or other legal titles of any nature,~~ the printed phrasing on the ballots shall also include a brief statement interpreting ~~same~~ the question.

(2) Amendment to any statute, the printed phrasing on the ballots shall also include a brief statement interpreting same the question.

(3) Municipal or county ordinance or resolution, In event that in any statute if the public question to be voted upon is so stated as not set forth in a statute, and

(A) the public question contained in the statute does not clearly to set forth the true purpose of the matter being voted upon, and

(B) no provision is made in said the statute for presenting the same question in simple language or printing upon the ballots a brief statement interpreting the same public question,

~~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 then the printed phrasing on the ballots may also include a brief statement interpreting the public question. If a brief statement interpreting the public question is included on the ballot, it shall first be approved by the governing body of the governmental entity or entities voting to place the public question on the ballot. The approval of the brief statement interpreting the public question shall not be unreasonably withheld. The governing body shall not delegate the duty of approving the brief statement.~~

c. For purposes of this section, a brief statement interpreting a public question shall be informative, fair, and balanced to assist the public in understanding the question and the potential consequences of their vote. The interpretive statement shall not encourage voters to approve or defeat the public question.

d. ~~Such~~ The public question, when ~~duly~~ voted upon at an election, ~~shall be deemed to be is~~ approved when that percentage of the ~~legal voters~~ votes of the State or any subdivision thereof as

required by the statute authorizing the proposal of such public question ~~shall vote in favor of its adoption is achieved.~~

~~For the purpose of this Title it is hereby declared that the intent and meaning in any such statute of the words “legal voters” are persons entitled to vote, and who do vote, at the time and in the manner prescribed in and by such statute upon the public question submitted; and for the purpose of ascertaining what is the percentage of the legal voters of any district defined in such statute, upon the public question therein directed to be submitted, the persons who do not vote at such election, the persons who do not vote upon the public question and the persons whose ballots may be declared invalid, shall not be estimated, counted or considered.~~

Comments

- *Statutory clarification*

Subsection a.(2) is an attempt to clarify the language that requires a governmental entity to plainly state the public question on the ballot based on the case law in this area.

The Commission asked that Staff address the seemingly duplicative language of the statute in what is now subsection b. To do so, Staff restructured the language, dividing the statutory requirements to make clear those pertaining to modifications of the State Constitution, a State statute, or a local ordinance or resolution. The restructuring also attempts to clarify the situations in which an interpretive statement is mandatory, and those in which it is permitted. Before drafting the proposed language, Staff researched the history of “any act or statute or other legal titles of any nature” and it appears only in this statute, and seems to pertain to statutes (with a title being the largest collection of statutes, an act being a subset thereof, and a statute being the smallest unit) so, in the interest of simplicity, the reference was changed to “statute”.

Based on the results of Staff research to this time, it appears that there is only one statute in New Jersey’s body of statutes that embeds an interpretive statement in the statute itself. That statute is N.J.S. 40:54-7.1.

The language in subsection c. above was drafted based on the language of the case law and N.J.S. 40:54-7.1 subsection g.

- *Additional statutory language requested by the Commission*

The Commission also requested that the language of the statute make clear that any interpretive statement must fairly and accurately reflect the ballot question pursuant to N.J.S.A. 19:3-6 and that approval of any interpretive statement shall not be unreasonably withheld. Drafting to incorporate these requests is included in subsection a.(3)(B) and subsection c.

Concerns about the use of “true purpose” and “unclear” were addressed by slightly modifying the statutory language to add language used by the Court to describe the concept of “true purpose” in *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, 451 N.J. Super. 310, 325 (Ch. Div. 2017). In that case, the Court determined that the “true purpose” of the question would be properly set out if the voter would have a better understanding of the consequences and scope of their vote for the public question.

Pursuant to *Desanctis v. Borough of Belmar* and *Gormley v. Lan*, subsection b.(3)(B) reflects the Court’s determination that an entity may delegate the writing of a brief statement, but not its approval. The mayor and governing body do not necessarily have to draft the statement. An administrator may draft the brief statement. But the mayor and governing body must approve it. This was derived from the determination of the court in *Desanctis v. Borough of Belmar*.

Subsection d. consists of the language from the last paragraph of the existing statute. Replacing “legal voters” with “votes” is not intended to change the substance of the statute and allows for the removal of the final sentence of the statute.

- *Statutes with embedded ballot questions*

Research was performed to discover which statutes in New Jersey have interpretive statements embedded in them. 249 New Jersey statutes came up in a search for statutes concerning “public question”. 175 of those contain the words “public question” in the text. Most were contained in Title 19, concerning elections, and others were contained in Title 40 and 40A, pertaining to municipalities and counties. 30 of the 249 have default draft ballot questions included in the statutory language, some of which, by their terms, allow for modification. As noted above, only one statute contains draft interpretive statement language.

- *Results of 50 state survey*

The Commission requested that Staff review the statutes of other states to determine if they might provide any guidance. Research revealed limited guidance. Of the 50 states, only four have statutory language specifically referencing interpretive statements.

In Maine, the Supreme Judicial Court placed significant interpretive weight on statements prepared by state Attorney General describing intent and content of each statewide referendum or proposed constitutional amendment.

Montana’s statute 13-27-312 deals with the review of the proposed ballot issue and statements by the attorney general. It states that the attorney general shall “examine the proposed ballot issue for legal sufficiency as provided in this section and shall determine whether the ballot statements comply with the requirements of this section. Montana statute 13-27-202 gives the approval of form required by the interpretive statement.

Pennsylvania likewise has statutes concerning interpretive statements including 6926.331.2 2007 referendum, 6926.332 Adoption of further referendum, 6926.333 Public referendum requirements for increasing certain taxes, 6926.904 Voter participation, 41215 Commission's report certified to election board; submitting question to voters, 735.1 Initiative of electors seeking consolidation or merger with new home rule charter, 2926 Submission of question on form of government, and 8703 Adoption of referendum.

In Texas, 15.4041 Concerns the Issuance of Interpretive Statements.