

To: New Jersey Law Revision Commission
From: Laura C. Tharney, Executive Director
Re: Projects Recommended for Conclusion
Date: September 16, 2024

MEMORANDUM

Pursuant to the direction provided by the Commission in 2022 regarding annual consideration of projects on which the Commission may want to conclude its work, Staff recently examined the full slate of Commission projects and identified three projects that may be appropriate for conclusion at this time.

As noted in previous memoranda recommending project conclusions, the fact that the Commission concludes work on any project at this time does not preclude us from resuming work in the same area, or a related area, in the future.

Projects Proposed for Conclusion

Get - Religious Divorce in the Context of Civil Divorce Proceedings

Chapter 34 of Title 2A (Administration of Civil and Criminal Justice) of the New Jersey statutes concerns the Divorce and Nullity of Marriage – Alimony and Maintenance – Care and Custody of Children.¹ This Chapter deals with matters including the causes for nullification and divorce, jurisdiction, parties, fees, judgments and appeals, alimony and maintenance, and the custody of children.²

Neither that Chapter, nor any other provision of New Jersey’s statutes, pertains to a religious divorce that may be sought by a party to a civil divorce proceeding.

By letter of October 31, 2023, the New Jersey State Bar Association (“NJSBA”) requested, consistent with N.J.S. 1:12A-8, that the New Jersey Law Revision Commission review the issue of the withholding of a Get – a Jewish decree of divorce – in response to opinions in two separate cases last year.³ The letter from the NJSBA explained the request as follows:

It is our understanding that New Jersey has no remedies for withholding a get in a Jewish divorce. In an effort to address fundamental fairness in divorces between

¹ N.J. STAT. ANN. § 2A:34-1 to 2A:34-95 (West 2024).

² *Id.*

³ Email from Amy Conrad, Government Affairs Manager, New Jersey State Bar Association, to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm’n, forwarding October 31, 2023, letter and attached memorandum from Timothy F. McGoughran, Esq., President of the New Jersey State Bar Association (October 31, 2023, 09:34 a.m. EST), (on file with the NJLRC).

the parties, the NJSBA wishes to explore the way other states address this issue – especially when it involves the intersection between secular and religious divorces. It is the aim of the NJSBA to make recommendations in light of any information the NJLRC uncovers on the issue, including any history of how this issue has been handled in New Jersey law, should the NJLRC wish to undertake this issue.⁴

In addition to the letter, the NJSBA provided a five-page memorandum to explain its “understanding of the issue of withholding Gets and the more recent treatment in the courts regarding same.”⁵ In October of 2023, the “Family Law Executive Committee of the NJSBA appointed a task force to study this issue” and the NJSBA memorandum suggested that “NJLRC’s collaboration on this issue would be very helpful.”⁶

Staff engaged in preliminary research regarding the state of the law as it pertains to Gets. This research was summarized in a 19-page memorandum that was considered by the Commission in March 2024.

At the March Commission meeting, Laura Tharney provided a summary of the available guidance on this issue. She indicated that New Jersey does not currently have any statutory or other provision that either permits a court to recognize or enforce any provision of a religious marriage contract, or that authorizes a court to compel a party to cooperate in obtaining a religious divorce. She explained that the case law in this area is limited and contradictory.

The early research done in this area indicated that New York is the only state with a statutory provision pertaining expressly to religious divorce. Neither the ALI nor the ULC provide guidance in the area. Secondary sources with a national scope generally indicate that a spouse seeking dissolution is not entitled to an order compelling a Get, and those focused on New Jersey law suggest that a statutory provision permitting a court to recognize or compel cooperation with religious law would be unconstitutional. At the conclusion of the presentation, Chairman Gagliardi confirmed that the consensus of the Commission was to respond favorably to the NJSBA’s request for assistance on this project.

After conducting some additional brief, targeted research, and summarizing the results for NJSBA contacts, Commission Staff was awaiting information from the NJSBA regarding the status of its internal process in this area.

In early July, Staff confirmed with the NJSBA that it had drafted some language on this subject and was seeking a legislative sponsor. Since no further input from the Commission was sought, and there is no role for the Commission to play at this time, Staff seeks authorization to conclude work in this area.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 5.

Local Land and Buildings Law – Bidding

The New Jersey Local Lands and Building Law (LLBL) allows a governmental unit to acquire property in a variety of ways.⁷ It also permits a governing body to require the seller, or lessor, to construct or repair a capital improvement as a condition of acquisition.⁸ The statute that permits the inclusion of such a condition precedent is silent, however, regarding whether the governing body must adhere to the public bidding requirements set forth in the New Jersey Local Public Contracts Law (LPCL)⁹ or the Prevailing Wage Act (PWA).¹⁰

This issue was brought to the Staff's attention by an attorney who practices in both the LLBL and LPCL areas. During Staff work in this area, it became clear that the relevant case law was very limited and that there was no legislative history information available.

In its present form, the LLBL does not explicitly require a governmental unit to seek public bids on acquisition of real property from private persons.¹¹ A hypothetical involving County "A" that seeks to lease office space from a private person for a term of years (when several locations would meet the county's requirements) pursuant to N.J.S. 40A:12-5(a)(3)¹² highlights the question of whether a "contract" awarded by the "contracting agent" (governing body) implicates the LPCL's bidding requirement; or, whether N.J.S. 40A:12-5(a)(3) of the LLBL serves as an "exemption" to the requirements of the LPCL.

N.J.S. 40A:12-5(a)(3) of the LLBL is also silent regarding the requirements that governmental entity must follow when it requests that the seller, or lessor, construct or repair a capital improvement as a condition of acquisition. A hypothetical involving Municipality "B," which seeks to purchase a parcel of real property from a private person and requires, as a condition of acquisition, that the seller construct a "capital improvement" (i.e. a library) on the parcel of land,¹³ raises the question of the ability of the governmental entity to issue specifications describing the amount and type of space needed and the improvements required if multiple locations meet its requirements. Additionally, it is necessary to determine whether the capital improvement requested by the governing body is subject to the PWA.

When a governing body is a party to a contract and has requested the construction of a capital improvement, the PWA requires that the contract contain a provision stating the prevailing wage rate which can be paid to the workers employed in the performance of the contract.

⁷ See N.J.S. 40A:12-5(a)(1).

⁸ N.J.S. 40A:12-5(a)(3).

⁹ N.J.S. 40A:12-5(a)(3) and *see* N.J.S. 40A:11-1 *et seq.*

¹⁰ N.J.S. 34:11-56.25 *et seq.*

¹¹ N.J.S. 40A:12-5

¹² See 35 N.J. PRAC., LOCAL GOVERNMENT LAW § 14:14 (Michael A. Pane) (4th ed. 2018).

¹³ This hypothetical is based, in part, upon discussions with the interested stakeholder to facilitate an understanding of the scope of the instant inquiry.

In July of 2020, the Commission considered a revised recommendation to modify the LLBL, to clarify that *under certain circumstances* a governmental unit must comply with the LPCL and when requiring a seller or, or lessor, to construct or repair a capital improvement as a condition of acquisition the governmental unit must also comply with New Jersey's PWA.¹⁴

After multiple rounds of drafting by Staff in 2020, the results of multiple rounds of outreach to knowledgeable individuals and entities¹⁵ were very limited, and mixed - one individual indicated “no objection, another commended the Commission for undertaking work in this area but objected to the proposed modifications.

When this project was last considered by the Commission, in July 2020, Commissioner Rainone asked whether the Report suggested that if a county decides to build a public works facility, they should specify their requirements and put it up for a public bid, and if there are several different possible locations for the facility, the lowest bidder would be the successful recipient.¹⁶ Mr. Silver explained that if there were available lands or facilities within the radius identified by the governmental entity, then it would have to specify its requirements and request bids on the property in question.¹⁷ Commissioner Rainone noted that when planning for construction of a public facility, neighborhood opposition is a crucial factor and therefore he does not see how it would be possible for the governmental unit to set forth such a specification.¹⁸ Chairman Gagliardi stated that his concern was that it would be an enormous task to get a nonpublic body to abide by the Public Contracting Laws.¹⁹ He suggested sending out the Report to see what kind of feedback and responses the Commission received.²⁰

The Revised Tentative Report was released by the Commission in July 2020 and distributed by Staff. Thereafter, Staff was not able to elicit comment on the issues that were of concern to the Commission. In the absence of case law or legislative guidance, and of commenters willing to provide the Commission with the benefit of their expertise in this area, the project did not move forward.

Staff recognizes that this is an important area and appreciates the member of the public who brought it to the attention of the Commission, as well as those who were willing to discuss and offer opinions on the drafting at various stages. It is of concern to Staff, however, that it does not appear that the Commission will have the resources to devote to this issue in the near future, and also that it would be beneficial to move forward when there are knowledgeable commenters

¹⁴ N.J.S. 34:11-56.25 *et seq.*

¹⁵ Including: the New Jersey League of Municipalities; the New Jersey Association of Counties; the Land Use section of the New Jersey State Bar Association; the New Jersey Institute of Local Government Attorneys; each of the twenty-one County Counsel offices; the New Brunswick Municipal Attorney; and several private practitioners.

¹⁶ N.J. Law Revision Comm'n, *Minutes NJLRC Meeting*, at 6, July 30, 2020, www.njlrc.org (last visited Aug. 14, 2024).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

who are willing to participate in the process. 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.

Municipal Vacancy Law

New Jersey offers municipalities a choice of twelve forms of government, eleven of which are in use, to varying degrees.²¹ This results in substantial variation in the composition of local governments, limiting the ability to have a uniform process in the event of a governmental vacancy. The Legislature attempted to remedy this problem in 1979, when it approved the Municipal Vacancy Law,²² but the problem of filling vacancies in a consistent and timely manner persists.

A Memorandum prepared by Staff and distributed to the Commission in 2018 provided information about: the forms of municipal government; the distribution of the forms of municipal government in New Jersey; a section-by-section breakdown of New Jersey's Municipal Vacancy Law; an identification of some of the issues and areas for change in the law; and an Appendix including supplemental and supporting information.

This project was originally brought to Staff's attention by Chairman Gagliardi since the fact that seats on governing bodies left open for extended periods of time can impair the ability of the body to function or force a costly special election.²³

At the March 2018 Commission meeting, Commissioner Bell commented that this was a fine project but questioned what seemed to be the underlying premise of simply filling vacant seats.²⁴ Chairman Gagliardi concurred, noting that a vacancy is not necessarily a bad or inappropriate thing, and that any work in this area should be done with no more of an impetus or incentive to fill an empty position than is already built in to the statutes.²⁵ He did note that this was an area that could present challenges for municipalities and result in litigation, making mention of the then-recent *Booker v. Rice* case and others like it.²⁶

This is clearly an important area of law, in which issues caused by unfilled vacancies recur periodically and can result in costly litigation. It is of concern to Staff that this project has suffered from a lack of resources since it was brought to Staff's attention almost a decade ago and subsequently authorized by the Commission in 2018. It does not appear that the Commission will have the resources to devote to a project of this type and scope it in the near future. As a result,

²¹ ²¹ N.J. Law Revision Comm'n, *Memorandum Concerning Municipal Vacancy Law*, at 1-2, Mar. 5, 2018, www.njlr.org (last visited Aug. 14, 2024).

²² N.J.S. 40A:16-1 et. seq.

²³ N.J. Law Revision Comm'n, *Minutes NJLRC Meeting*, at 7, March 15, 2018, www.njlr.org (last visited Aug. 14, 2024).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

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.