

M E M O R A N D U M

TO: Mayor and Village Council

FROM: McManimon, Scotland & Baumann, LLC

DATE: March 30, 2016

RE: Petition for Referendum of a Bond Ordinance

You have asked for our counsel in connection with the question of which statute governs the petition for referendum of a bond ordinance adopted by the Village Council of the Village of Ridgewood.

In our view, the petition for referendum of a bond ordinance adopted by the Village is governed by the provisions of N.J.S.A. 40:69A-1 et seq.

There are 11 different forms of government under which a municipality can constitute itself in New Jersey. The Village has constituted itself under one of the optional municipal charter plans set forth in N.J.S.A. 40:69A-1 et seq. This statute is better known as the Faulkner Act. Among other things, the Faulkner Act provides its municipalities the general right of referendum. Specifically, N.J.S.A. 40:69A-185 gives to the voters of the Village the power of referendum “which is the power to approve or reject at the polls **any ordinance** . . . passed by the council, against which a referendum petition has been filed[.]” (emphasis added) The New Jersey Supreme Court recently stated in a case regarding applicability of the Faulkner Act to an ordinance establishing a new organizational table for the police department, that the word “any” clearly is synonymous with the word “all”.

There is no language in the Faulkner Act that exempts from “all ordinances” an ordinance that authorizes the incurring of indebtedness (i.e. a bond ordinance). In fact, the Court stated, “the term ‘any ordinance’ does not lend itself to subdividing ordinances into various classes.” Further, prior drafts of the Faulkner Act included an exemption from the referendum process for ordinances authorizing the incurring of indebtedness. The exemption would not have meant that bond ordinances were not subject to referendum at all. Rather, like Walsh Act municipalities, whose statutes do contain this exact same exemption, it would mean that Faulkner Act municipalities would have had to look to another statute – N.J.S.A. 40:49-1 et, seq., better known as the Home Rule Act – which was in place **prior to adoption** of the Faulkner Act. The final, adopted version of the Faulkner Act did not include this exemption. As the New Jersey Supreme Court points out, the Legislature “obviously considered and rejected” this exemption.

The New Jersey Supreme Court has stated that the referendum provisions of the Faulkner Act are “part of a comprehensive legislative scheme that spells out the general right of referendum in Faulkner Act municipalities and the specific exceptions to that right.” The Court does not list bond ordinances such as the Village’s parking utility bond ordinance among those specific exceptions.

As a Faulkner Act municipality, any ordinance of the Village, including the subject parking utility bond ordinance, is subject to the referendum provisions of N.J.S.A. 40:69A-185

through 196. Assuming a successful petition and certification by the Village Clerk, the timing of a referendum election is governed by N.J.S.A. 40:69A-192. This section states that the ordinance shall be submitted to the voters at the “next general or regular municipal election occurring not less than 40 days” after a permitted withdrawal period, and if “no such election is to be held within 90 days the council shall provide for a special election to be held **not less than 40 nor more than 60 days**” from the permitted withdrawal period. (emphasis added).

As I understand it, the Petitioners are alleging that the petition and referendum of the recently adopted parking utility bond ordinance is governed by the provisions of Home Rule Act, and specifically N.J.S.A. 40:49-27. A successful referendum petition under the Home Rule Act results in an election “at the next general election held in the municipality at least thirty days after the filing of the protest or protests herein provided for, unless the governing body thereof shall call a special election.” Accordingly, the Petitioners are alleging that a referendum election may be held at the next general election in November 2016, or at a special election prior if voluntarily elected by the Village Council.

For the reasons set forth above, it is our view that the Petitioners use of the Home Rule Act to guide the referendum process is incorrect.

The Home Rule Act applies to municipalities whose enabling statutory framework does not provide for referendum. For example, municipalities operating under the Borough form of government are subject to the statutory provisions of N.J.S.A. 40A:60-1. Such statute does not provide specific provisions regarding the power of referendum. As a result, petition for referendum of a bond ordinance adopted by a Borough is governed by the Home Rule Act. The timing of a referendum election as quoted above by Petitioners is correct for Boroughs and other municipalities governed by the Home Rule Act.