



April 21, 2016

Ms. Heather Mailander
Ridgewood Village Clerk
131 N. Maple Avenue
Ridgewood, New Jersey 07450

Re: Petition to Repeal Bond Ordinance #3521

Dear Ms. Mailander:

My name is Renée Steinhagen, and I am the Executive Director of New Jersey Appleseed Public Interest Law Center, a nonprofit legal advocacy organization, that *inter alia* represents residents and community-based organizations with respect to their rights of initiative and referendum under New Jersey law. My clients, the Committee of Petitioners in the aforementioned matter (and, in the successful Petition to Repeal Ordinance #3519) have asked me to write to you in response to the conclusion expressed in the advisory legal opinion posted on the Village's website on March 30, 2016. In that opinion, the Village's bond counsel has concluded that the Faulkner Act's general referendum provisions, N.J.S.A. 40:69A-185 et al., and not the Local Home Rule Act specific provision governing bond referendum, N.J.S.A. 40-49-27 govern my client's recent petition.

Counsel's opinion appears to rest on the fact that the Faulkner Act does not include an explicit exclusion of such an "ordinance authorizing an improvement or the incurring of an indebtedness" as is included in the Walsh Act. N.J.S.A. 40:74-5 (Walsh Act exclusion). This view ignores the reasoning of the Appellate Division in In re Margate City, 424 N.J. Super. 242 (App. Div. 2012), holding that the right to petition challenging an ordinance authorizing the incurring of an indebtedness is available in every municipality, and that the substance and procedure of such a petition is governed by the Local Home Rule Act, and not the Walsh Act. In a similar vein, Committee of Petitioners for Repeal of Ordinance No. 522 of the Borough of West Wildwood v. Frederick, 435 N.J. Super. 552 (App. Div. 2014) holds that the form of referendum petition of a bond ordinance is governed exclusively by Local Home Rule Act, not the Walsh Act). The reasoning of these cases, both in the Walsh Act framework under review those case as well as the framework governing Faulkner Act municipalities, accord with the well-established precept of statutory construction that when two statutes conflict, the more specific controls over the more general. See generally New Jersey Transit Corporation v.

New Jersey Appleseed
Public Interest Law Center of New Jersey
744 Broad Street, Suite 1525
Newark, New Jersey 07102

Phone: 973.735.0523; 917-771-8060
Email: steinhagen_pilc@yahoo.com
Website: www.njappleseed.org

Borough of Somerville, 139 N.J. 582, 591 (1995) (finding provision detailing procedure whereby taxpayers can appeal a property tax assessment to prevail over statute that generally applies to all State claims not expressly controlled by other statute of limitation periods).

It is New Jersey Applesseed's opinion that specific referendum provisions always prevail over the general referendum provisions found in the Faulkner Act, the Walsh Act, or the Optional County Charter Act, ("Musto Act") N.J.S.A. 40:41A-1 et seq.¹ concerning the right of certain county residents to repeal ordinances enacted by their respective Board of Freeholders when they are adopted. New Jersey statutes are replete with specific initiative and referendum provisions governing the right of citizens to initiate or repeal ordinances concerning, among other things, county Blue Laws, changes in the salary of municipal council members, whether school boards are appointed or elected, and regulation of the sale of alcoholic beverages or games of chance. In many of these instances the form of petition, the number of signatures needed and the timing and nature of the election at which time the referendum will be held differs from the general municipal and county referendum statutes that otherwise govern initiative and referenda petitions in Walsh, Faulkner or Musto Act entities. As the court noted in Committee of Petitioners for Repeal of Ordinance No. 522 of the Borough of West Wildwood v. Frederick these differences are often tailored to meet the needs of the type of ordinance at issue. Id., 435 N.J. Super. at 565-567. As a result, New Jersey Applesseed always directs its clients to satisfy the requirements of the specific referendum statute implicated by their petition, and not the form requirements of the Faulkner Act or Walsh Act if they reside in such municipalities.

Given our opinion that the our client's petition is governed by the Home Rule Act, and not the Faulkner Act, if their petition is found sufficient, the referendum must occur at the next general election, unless the Village Council specifically and affirmatively decides to hold a special election. See N.J.S.A. 40:49-10.

If you have any further questions regarding this matter, do not hesitate to contact me.

Sincerely,

Renée Steinhagen, Esq.

Cc: Committee of Petitioners

¹ It should be noted that the Musto Act shares nearly the same language and structure as the Faulkner Act with respect to the rights of initiative and referendum.