

RESOLUTION

WHEREAS, the West Orange Township Council at its regular meeting on March 21, 2023, adopted Resolution numbers 80-23, 112-23, and 113-23, authorizing execution of various professional service agreements with the Township Attorney and his firm, each adopted by an affirmative vote of two Council members, negative votes by two Council members, one Council member stating her abstentions and the Mayor casting in each instance an affirmative vote to break the tie votes of the Council; and

WHEREAS, in each of those votes, the Mayor's was cast and accepted by the Municipal Clerk based on advice from the Assistant Township Attorney of the applicability of N.J.S.A. 40A:9-132, providing that "in every municipality, unless otherwise provided by law, if the governing body shall fail (a) to organize and elect a president or chairman at its annual meeting held for such purpose, (b) to fill any vacancy in office or position, (c) to adopt any resolution or ordinance or (d) to take any other action whatsoever, by reason of a tie or insufficient vote among the members, the mayor shall vote in aid of said organization, the election of candidates, appointments of officers or others, adoption of resolutions or ordinances or the taking of any other action"; and

WHEREAS, the Township of West Orange is a municipal corporation of the State of New Jersey, duly established and operating as a Faulkner Act Mayor-Council form of government; and

WHEREAS, the Assistant Township Attorney's advice was based on the reasoning that N.J.S.A. 40A:9-132, was a "general law" as defined in the Faulkner Act in N.J.S.A. 40:69A-28, and not inconsistent with the Faulkner Act such that it should apply and govern the situation of the stated votes; and

WHEREAS, missing from the Assistant Township Attorney's analysis was any consideration of N.J.S.A. 40:69A-41(b), providing "the mayor may attend meetings of council and may take part in discussions of council but shall have no vote except in the case of a tie on the question of filling a

vacancy in the council, in which case he may cast the deciding vote”, such provision a part of the Faulkner Act and plainly inconsistent with N.J.S.A. 40A:9-132; and

WHEREAS, our Courts have made clear that a “general law must be consistent with the Faulkner Act for the general law to control, the general law does not rein supreme over the Faulkner Act” (See DeSoto v. Smith, 383 N.J.Super. 384, 393 (App. Div. 2006), Keuerleber v. Twp. of Pemberton, 260 N.J.Super. 541 (App. Div. 1992), and N.J.S.A. 40:69A-28); and

WHEREAS, taking all of those facts and law into account, the Resolutions recorded as adopted based on the votes taken including those of the Mayor, who should not have been permitted to vote, were impermissible as a matter of law and whether or not *ultra vires* and a nullity as a matter of law, should now be rescinded to formally nullify those actions and correct the record of the actions taken at the March 21, 2023 Council meeting;

NOW, THEREFORE, BE IT, AND HEREBY IT IS, RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, that Resolution numbers 80-23, 112-23, and 113-23, authorizing execution of various professional service agreements with the Township Attorney and his law firm, each adopted by virtue of affirmative votes of two Council members, negative votes of two Council members, one Council member stating her abstentions and the Mayor, believing her affirmative votes to be valid and binding based on the advice of the Assistant Township Attorney, casting in each instance an affirmative vote to break the tie votes of the Council, are hereby rescinded.

Karen J. Carnevale, R.M.C.
Municipal Clerk

Tammy Williams
Council President

Adopted: April 4, 2023