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CONFIDENTIAL MEMORANDUM

To : Princeton Transition Task Force

From : William John Kearns, Jr., Attorney

Re : *Municipal Court*

Date : March 14, 2012

I have been asked to address some transition issues relating to the Municipal Court, including whether a move to facilities in the Princeton Township building could be accomplished in advance of January 1, 2013.

For convenient reference, when I refer to Princeton, that will mean the new consolidated municipality. When I refer to the existing municipalities, I will specifically use the terms Borough or Township.

First of all, the Municipal Consolidation Act, *N.J.S.A. 40:43-66.35*, et seq, provides the statutory framework for the consolidation of municipalities.

The consolidation referendum provided for the establishment of the consolidated Princeton, with the Borough form of government as of January 1, 2013, with the new Mayor and Council to be elected at the General Election in November, 2012.

All governing powers, as of January 1, 2013, are vested in the Mayor and Council who take office on that date. The new government assumes the assets and liabilities of the Borough and the Township, pursuant to *N.J.S.A. 40:43-66.65*

40:43-66.65. Succession in government

From and after the date of consolidation, the consolidated municipality or new school district, if any, shall be vested with and subject to the assets, contracts, debts and other obligations of the participating municipalities, or constituent school districts, as the case may be, to the extent set forth in the recommendations contained in the final report of the joint municipal consolidation study commission. The consolidated municipality, or such new school district, as the case may be, shall have the power to complete any work, service or improvement, and to confirm and collect previously levied taxes and assessments of the participating municipalities or constituent school districts, as may be appropriate, which are incomplete, unconfirmed, or uncollected on the date of consolidation. The consolidated municipality or new school district shall carry out those provisions of the plan of consolidation approved by the voters of the participating municipalities which are not inconsistent with this act or other laws of this State.

In order to provide the consolidated municipality with a “fresh start”, existing terms of office and appointments terminate as of January 1, 2013, when the new Mayor and Council may make appointments.

40:43-66.68. Officers and appointees of governing body of participating municipalities; termination of office

The terms of office and appointments of all local officers and employees elected or appointed by, in, or for the participating municipalities shall, except as otherwise provided in this act, cease and terminate on the date of consolidation. The terms of office of any members appointed by the governing body of any participating municipality to any special district or public authority shall cease and terminate on the date of consolidation.

Clearly, the law contemplates the continuation of officers and employees and the challenge arises where there are two people filling what will be a single position.

The new Mayor and Council will have to decide on the individuals to fill the positions, and layoffs are permitted for economic reasons, as well as to carry out the consolidation plan approved by the voters.

With regard to the Court and Court personnel, there are some unique issues to understand. While the employees are municipal employees, they are also part of the judicial system and responsible to the Judiciary.

Every municipality is required to have a Municipal Court. *N.J.S.A. 2B:12-1.*

2B:12-1. Establishment of municipal courts.

a. Every municipality shall establish a municipal court. If a municipality fails to maintain a municipal court or does not enter into an agreement pursuant to subsection b. or c. of this section, the Assignment Judge of the vicinage shall order violations occurring within its boundaries heard in any other municipal court in the county until such time as the municipality establishes and maintains a municipal court. The municipality without a municipal court shall be responsible for all administrative costs specified in the order of the Assignment Judge pending the establishment of its municipal court.

b. Two or more municipalities, by ordinance, may enter into an agreement establishing a single joint municipal court and providing for its administration. A copy of the agreement shall be filed with the Administrative Director of the Courts. As used in this act, "municipal court" includes a joint municipal court.

c. Two or more municipalities, by ordinance or resolution, may agree to provide jointly for courtrooms, chambers, equipment, supplies and employees for their municipal courts and agree to appoint judges and administrators without establishing a joint municipal court. Where municipal courts share facilities in this manner, the identities of the individual courts shall continue to be expressed in the captions of orders and process.

d. An agreement pursuant to subsection b. or c. of this section may be terminated as provided in the agreement. If the agreement makes no provision for termination, it may be terminated by any party with reasonable notices and terms as determined by the Assignment Judge of the vicinage.

When the Judge and the Court Administrators made a presentation to the Transition Task Force, a question was raised as to whether the move of the Court to the Township Municipal Building had to wait until 2013, or whether it could be accomplished sooner.

With regard to the potential to move the Borough Municipal Court to the Township facilities at a more convenient time than in early 2013, that is relatively easy.

Please note, specifically, subsection c., which provides for shared courtrooms.

That could be accomplished by the Borough and the Township entering into an Agreement for the shared facilities until December 31, 2012. Each court would continue to be separate, with separate court dates and revenue and expense distribution. It would only be the facilities that would be shared, but that might facilitate the transition and enable it to be scheduled at a more convenient date.

With regard to post-January 1, 2013, new appointments for Judge and Court Administrator would need to be made.

The selection of a Court Administrator, for example, is subject to approval by the Assignment Judge for Mercer County. In fact, the Court Rules require that the Assignment Judge can designate someone to sit in on any interviews for the Court Administrator position.

So, while the new Mayor and Council will need to appoint a Court Administrator, that appointment will be subject to the approval of the Assignment Judge.

It should be noted that both the Borough and the Township Municipal Court Administrators are tenured and whichever is selected to be the Princeton Municipal Court Administrator will have tenure in the position in the consolidated Municipality.

N.J.S.A. 2A:8-13.1 provides for tenure for the administrator of the municipal court in any borough who has held the position for five years or more and who is certified. There is a similar provision for other municipal court administrators in *N.J.S.A. 2A:8-13.3*

The Consolidation Act provides that:

40:43-66.75. Officers and employees

All officers and employees of the participating municipalities whose employment is continued following consolidation shall be employees of the consolidated municipality. They shall be subject to the orders and control of the mayor or other chief executive officer of the consolidated municipality, and of such other officers of the consolidated municipality as he shall authorize, or as shall be authorized under the plan or form of government of the consolidated municipality.

The tenure and pension rights under State laws of officers and employees of the participating municipalities, or of any public authority thereof, shall not be affected by the consolidation of the participating municipalities, but the provisions of this section shall not preclude the revision, consolidation or elimination of offices and positions as may be required by the consolidation, all of which shall be carried out in conformity with the provisions of the consolidation plan approved by the voters pursuant to section 28 of this act.

Obviously, there can only be one Court Administrator. So one of the current Court Administrators will, presumably, become the Deputy Court Administrator. That will be a decision for the new Mayor and Council.

The new Mayor and Council will be required to appoint a Municipal Judge for a term of three (3) years.

Presumably, since the same individual serves as Municipal Judge in both the Borough and the Township, there would be some continuity in that position.

There is a continuity provision in *N.J.S.A. 2B:12-4* which provides that a Municipal Judge will continue to serve "until a successor is appointed and qualified" although that contemplates a single municipality.

However, since all terms end as of January 1, 2013, there is a provision that would enable the Assignment Judge to designate an Acting Judge, *N.J.S.A. 2B:12-6*, in the event that the new Mayor and Council do not act promptly on that position.

With respect to the Court, there probably should be some outreach to the Mercer County Assignment Judge to see if there is any guidance that can be obtained with respect to the transition as well as to coordinate the transition.

Aside from personnel, there will be a number of matters to be addressed, ranging from the mundane (new Summons and other court forms) to the serious (staff levels, compensation, etc.).

I hope that this is of assistance.