

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE
TOWNSHIP OF MOUNT OLIVE TABLING ORDINANCE NO. 8-
2010 AND DIRECTING THE TOWNSHIP CLERK NOT TO
FORWARD SAME TO THE COUNTY CLERK FOR A
REFERENDUM**

WHEREAS, the Township Clerk was presented with a document entitled Petition to Initiate a Mount Olive Township Ordinance, with an ordinance entitled:

“AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE, MORRIS COUNTY, NEW JERSEY TO REQUIRE THE TOWNSHIP OF MOUNT OLIVE TO CONTRACT EMERGENCY MEDICAL SERVICES WITH THE FLANDERS FIRE AND RESCUE COMPANY NUMBER 1, INC. AND THE BUDD LAKE FIRST AIDE AND RESCUE SQUAD, INC., HEREAFTER REFERRED TO AS THE FLANDERS FIRE AND RESCUE COMPANY #1 AND BUDD LAKE STATION 27 RESCUE, FOR EMERGENCY MEDICAL SERVICES DURING THE HOURS 5 P.M. TO 5 A.M. MONDAY THROUGH FRIDAY AND DURING ALL HOURS ON SATURDAYS AND SUNDAYS FOR THE YEARS 2010 TO 2014”; and

WHEREAS, this ordinance was submitted to the Township Council in accordance with the provisions of the Faulkner Act, which permits Initiated Referendums under certain circumstances and in accordance with the provisions of statute to be placed on the ballot as a Referendum; and

WHEREAS, the Petition to Initiate a Mount Olive Township Ordinance has subsequently been certified by the Township Clerk to the Township Council with the advice that it contains approximately 1700 verified signatures and in accordance with the applicable statutes dealing with Initiative and Referendum, the Certification by the Township Council effectuates a First Reading of the ordinance and at this point in time the Township Council could set Ordinance No. 8-2010 down for a public hearing and a decision by the Township Council as to whether or not the ordinance would be adopted with the presumption made by the petitioners that if the ordinance was not adopted within 20 days after submission by the Clerk, it would then appear on the General Election Ballot as a Referendum as requested in the Petition to Initiate a Mount Olive Township Ordinance; and

WHEREAS, the Petition to Initiate a Mount Olive Township Ordinance was referred to the Township Attorney for his review and advice by the Council President; and

WHEREAS, the Township Attorney issued an opinion letter dated February 23, 2010, which sets forth the precise reasons as to why the ordinance proposed by the Petition is **not** an appropriate ordinance to be placed on the ballot for a referendum question pursuant to the terms and conditions of the Faulkner Act and applicable case law; and

WHEREAS, the Township Attorney, in his opinion letter dated February 23, 2010, acknowledges that under a Faulkner Act form of government, which Mount Olive is, certain ordinances may be initiated by petition and if not adopted by the Township Council may indeed be placed on a ballot for a Referendum, however, the opinion notes that under the Faulkner Act there are specific limitations as to the nature of certain issues that may be incorporated into ordinance to be placed on the ballot for a Referendum; and

WHEREAS, for instance, under the Faulkner Act no Referendum dealing with a zoning question may be placed on the ballot and referenda which deal with a municipality's Current Budget or Capital Budget are not appropriate to be placed on the ballot nor are actions entertained by the Township Council which are described as "administrative", rather than "legislative" cannot be placed on the ballot, notwithstanding that a Petition has been filed with the Township Clerk and certified to by the Township Council; and

WHEREAS, the Township Council has reviewed the opinion of the Township Attorney and reviewed the proposed ordinance, which ordinance is specific in that it would require the Township Council to adopt a budget and provide for contributions or appropriations in the year 2010 and for five (5) subsequent years from the Township's Current Budget to the Flanders Fire & Rescue Company and the Budd Lake Rescue Squad, identical to that made in the calendar year 2009 for purposes of paying life insurance, reimbursement for reasonable operating expenses, reasonable rent for the building facilities to house the vehicles, fuel, etc., as well as a section of the ordinance, Section 23-1C, which requires a similar contribution to be made for the purchase of major and minor capital equipment as described in the ordinance and in accordance with Section 23-1G of the ordinance, these provisions as to the Current and Capital

Budgets would be retroactive to January 1, 2010 and remain in affect for a period of five (5) years; and

WHEREAS, the Township Attorney, in his opinion dated February 23, 2010, specifically references the case of City of Ocean City v. Somerville, 408 NJ Super 345 (App.Div.2008), the City of Ocean City being a Faulkner Act community, in which the Appellate Division specifically held that issues dealing with financial or budgetary issues of the municipality may **not** be placed on the ballot because the Legislature has established a comprehensive system pertaining to municipal budgets, debt, salaries etc. and, therefore, this area has been totally preempted as a result of statutory provisions, thereby precluding a Referendum; and

WHEREAS, it is to be noted that in accordance with case law, referenda are to be limited to **Legislative** actions and the actions called for, in part, in the Petition to Initiate a Mount Olive Township Ordinance i.e., for the Township to enter into a contract with the First Aid Squads, is **not** a Legislative action, but is an administrative action and administrative actions pursuant to the decisions in Reuter v. Borough of Fort Lee, 328 NJ Super 547 (App.Div.2001) cert. granted 164 NJ 561 and in the case of Albigese v. Jersey City, 129 NJ Super 567 (App.Div.1974), which is what is proposed in Ordinance No. 8-2010, are precluded from referenda pursuant to case law.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Mount Olive that it has reviewed the document entitled Petition to Initiate a Mount Olive Township Ordinance and based upon the legal opinion issued by the Township Attorney, the Township Council has concluded that the Referendum which is sought to be placed on the ballot is not a Referendum that, pursuant to the Faulkner Act and case law, can properly be placed on the ballot, as it is not Legislative in nature and deals with issues which are prohibited by statute and case law i.e., budgetary issues, since the Legislature has preempted this area and, therefore, a Referendum is inappropriate.

BE IT FURTHER RESOLVED by the Township Council of the Township of Mount Olive as follows:

1. Ordinance No. 8-2010 incorporated in the Petition to Initiate a Mount Olive Township Ordinance is hereby tabled.

2. There will be no public hearing in connection with this proposed ordinance, which had been tentatively scheduled by the Township Clerk for March 24, 2010 at the Mount Olive Township Middle School.

3. The Township Clerk is directed NOT to forward the Petition to Initiate a Referendum which she has certified, to the County Clerk to be placed on the ballot for a Referendum when the 20 day period within which the Council is permitted to adopt said ordinance expires.

TOWNSHIP OF MOUNT OLIVE

Phil Tobey
Mount Olive Township Council President

I hereby certify the above to be a true copy of a resolution passed by the Mount Olive Township Council at a duly convened meeting held on March 16, 2010.

LISA M. LASHWAY
Mount Olive Township Clerk
3/16/2010 3:47 pm