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Newsletter of the Pennsylvania State Association of Township Solicitors

July 6, 2021

Headlines

Flurry of Municipal-Related Legislation Passed

The General Assembly was busy in the run-up to adopting the 2021-22 state budget with passage of several pieces of legislation that will impact municipalities, including these two significant ones:

- **Senate Bill 554 (now Act 65 of 2021)** amends the Sunshine Act to require agencies to post a meeting agenda containing all items that will be voted on at least 24 hours before the meeting on their websites (if they have one). There is a provision that allows agencies to add unadvertised items to the agenda if agreed to by a majority of the governing board.
- **House Bill 1621 (now Act 50 of 2021)** provides for the regulation of small wireless facilities in municipal rights-of-way and allows municipalities to charge an annual fee for the use of their rights-of-way and maintain zoning authority.

Both take effect on August 29, 2021.

Supreme Court Tosses Challenge to Sufficiency of ZHB Decision

On June 22, 2021, the Pennsylvania Supreme Court issued an order that it had improvidently granted an appeal by the citizens' group Protect PT from a Commonwealth Court decision that upheld the Penn Township zoning hearing board's decision to permit unconventional natural gas wells in the township. Protect PT had challenged the sufficiency of the ZHB's decision, claiming that the ZHB paid lip service to Protect PT's expert witnesses and left it unable to meaningfully challenge the ZHB's decision.

New Pennsylvania OT Exemption Minimum Salary Requirements Repealed

As part of the deal reached on the 2021-22 Pennsylvania budget, Gov. Wolf agreed to repeal regulations published in October 2020 that would have significantly increased the minimum salary requirements for those eligible for white-collar overtime exemptions under the Pennsylvania Minimum Wage Act (PMWA), which is Pennsylvania's equivalent to the federal Fair Labor Standards Act (FLSA).

The regulations increased the minimum salary requirement under the PMWA to \$684 per week to match the FLSA standard but also were set to raise the Pennsylvania thresholds to \$780 per

week on October 3, 2021, and \$875 per week on October 3, 2022. With this deal, the PMWA and FLSA minimum salary thresholds will remain the same, at least for now.

Recent Decisions

Municipality Unable to Rely on Exculpatory Release Signed by Charity Event Participant

In *Degliomini v. ESM Productions*, ___ A.3d ___, 2021 WL 2546382 (Pa. June 22, 2021), the Pennsylvania Supreme Court ruled that an exculpatory release signed by a participant in a charity bike ride violated public policy and did not immunize the City of Philadelphia from liability for breaching its duty to repair and maintain public streets. To read more, [click here](#).

Municipal Authority Given ‘Public Use’ Designation, Loses Benefits of Nonconforming Use

In *Chester Water Authority v. Kennett Twp. Zoning Hearing Bd.*, No. 377 C.D. 2020, 2021 WL 2627501 (Pa.Cmwlt. June 25, 2021), the Commonwealth Court ruled that a municipal authority waived its argument that it was not an authority under the township’s zoning ordinance and held that the proposed use was a public use subject to conditional use requirements, thereby eliminating any existing nonconforming use benefits. To read more, [click here](#).

EHB Decision to Lead to More Weight Given to Municipal Comments?

In a unanimous (four-judge) 32-page opinion in *Clearfield Co. v. Commonwealth, Dept. of Environmental Protection*, EHB Docket No. 2020-016-L, the Pennsylvania Environmental Hearing Board (EHB) overturned DEP’s issuance of a permit for a 5,000-ton-per-day landfill that was proposed to be built in Boggs Township, Clearfield County. In granting a motion for summary judgment filed by Clearfield County, the EHB was critical of the lack of required information in the permit application and even more critical of DEP’s acceptance of the multitude of deficiencies and the omission of information necessary for DEP to make a proper decision.

From a municipal standpoint, the decision may have significance with respect to the weight that municipal comments and concerns must be afforded by DEP. The EHB recognized that statutory and regulatory language required DEP to provide heightened respect and review of the host county’s concerns about and objections to the landfill, particularly where the proposed landfill was not accounted for in the county’s solid waste management plan under Act 101. DEP improperly treated the county “as just another commenter,” whereas the law requires DEP to specifically respond to any objections raised by the host county. This line of reasoning is significant because the EHB’s analysis of the attention that should be paid to host county comments can be extrapolated to other municipal entities. Essentially, when a statute or a regulation specifically states that a municipality shall have the right to object or comment on an action that DEP is considering, those comments are to be afforded more weight and a higher level of scrutiny, response, and explanation as DEP goes through its deliberative process. It may even require specific responses and reasons for overriding the municipal objections.

The EHB also addressed an argument pressed by DEP that, regardless of any deficiencies in the application, summary judgment was not appropriate because any alleged deficiencies or omissions could be addressed at trial under the concept of the EHB’s de novo review power. The EHB acknowledged that its de novo review powers are fairly broad but imposed a limitation on that power, stating that not everything can be remedied by it. In many cases, certain crucial,

required analysis must be performed by DEP in the first instance, and many deficiencies must also be addressed by DEP, not the EHB, since de novo review is not a license to ignore statutory and regulatory requirements during the permitting process.

NOTE: *The above case summary was drafted by Paul J. Bruder, Esq., of Mette, Evans & Woodside, who represented Clearfield County in the matter.*

Legislative & Policy

In other recent legislative activity, the following bills passed the General Assembly and were signed into law by Gov. Wolf:

- House Bill 957 (now Act 43 of 2021) amends the Municipality Authorities Act to allow owners of multiple rental properties served by a single meter to request the authority to adjust the amount billed.
- House Bill 827 (now Act 37 of 2021) gives municipalities the option to create a microenterprise loan program and allow for tax abatement for blighted properties.

Gov. Wolf vetoed Senate Bill 618, which would have prohibited the state as well as counties, municipalities, school districts, and colleges from requiring proof of COVID-19 vaccines. In addition, the House Judiciary Committee has approved HR 117, which would direct the Judiciary Committee to investigate the conduct of a Franklin County township supervisor to determine whether he should be impeached for misbehavior in office. HR 117 is before the House.

Upcoming Educational Offerings

[PSATS Regional Forums \(In-Person\) - Various Dates](#)

These Regional Forums will be PSATS' first major return to in-person educational events and will offer a variety of CLE opportunities. The first two will take place July 20 in Erie and July 28 in the Lehigh Valley. For more information, go to www.psats.org/psats-regional-forums.

[Understanding & Implementing PA's Police Reform Bills – Act 57 & 59 of 2020 \(Webinar\) – 7/8/21 \(1 CLE\)](#)

This program will review the statutory and regulatory requirements for municipalities and their police departments to properly implement Act 57, which deals with background checks for law enforcement employment purposes, and Act 59, which addresses mental health evaluations and post-traumatic stress disorder (PTSD) for law enforcement officers. The webinar will also provide elected policy makers, municipal officials, chiefs of police, and command staff with the best practices for implementation and recognizing the pitfalls.

[Basic Parliamentary Procedure for Local Government \(Webinar\) – 7/15/21](#)

NOTE: This would be a great share with your township and ZHB clients!

Parliamentary procedure may not seem to be the most exciting topic, but it is the absolute foundation for running an efficient township meeting and instilling confidence in your residents that the township is being effectively governed. In this virtual class, you will learn the basics of parliamentary procedure and ways to improve your public meetings. The webinar will cover a variety of the most common procedural tasks, such as developing agendas, making and amending motions, the order of voting, and much more.

[In the Hot Seat – Handling Tough Situations as the Chair of the Board \(Webinar\) – 7/22/21](#)

NOTE: This would be a great share with your township and ZHB chairs!

Whether you have been the chair of your township board for a long time or are new to the game, many situations occur during township meetings that require the chair to resolve them in an effective manner. This includes addressing challenging residents during public comment, disagreements between board members, and the complexities of working through parliamentary procedure issues during difficult votes. In this virtual class, you will learn best practices for tackling these situations and making yourself a better board chair.

[2021 PSATS HR & Labor Management Institute – 9/23-9/24/21 \(8 CLE\)](#)

This 1.5-day class is a must-attend for anyone who has responsibility for HR and personnel management in their township.

2021 Solicitors Fall Seminar

PSATS will be holding three in-person Solicitors Seminars this fall. Register at the links below:

[West – Courtyard Marriott, Cranberry Township, Butler County - 9/28 \(5 CLE\)](#)

[Central - PSATS, Cumberland County - 10/7 \(5 CLE\)](#)

[East - Holiday Inn, Lansdale-Hatfield, Montgomery County - 11/4 \(5 CLE\)](#)



Comments and suggestions about this biweekly newsletter for members of the Pennsylvania State Association of Township Solicitors can be emailed to Scott Coburn at scoburn@psats.org.



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