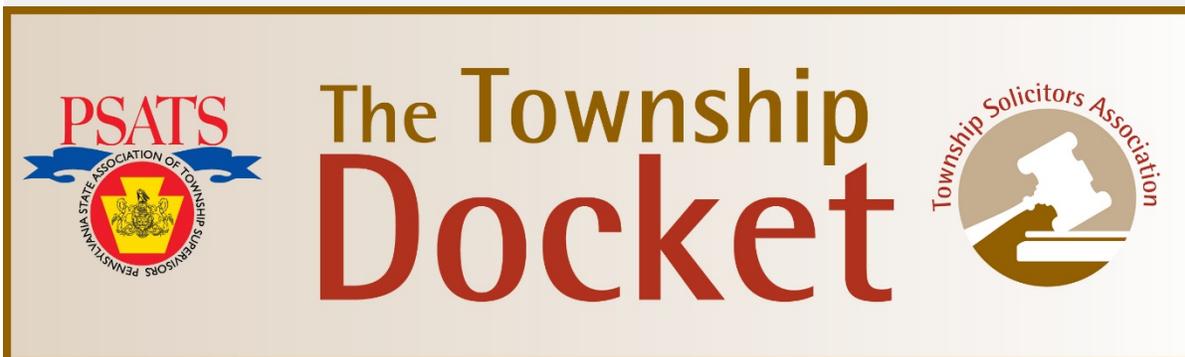


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Newsletter of the Pennsylvania State Association of Township Solicitors

August 16, 2021

Headlines

Past Issues of the Township Docket Now Available on PSATS Website

In case you are looking for information in a past newsletter, you can now access them under the “Newsroom” tab when you are signed in at psats.org.

Superior Court Affirms Existence of Cause of Action for Discrimination under Medical Marijuana Act

Employees may sue their employers under the Pennsylvania Medical Marijuana Act for discrimination because of the employee’s status as an individual who is certified to use medical marijuana. For more information about the Superior Court’s recent decision, [click here](#) to read a blog post by Denise Elliott and Brittany Jones of McNees, Wallace & Nurick.

PSATS Participates in Commonwealth Opioid Settlement Briefing

PSATS Executive Director David Sanko and Executive Board Chair A.J. Boni are participating on the task force that is designing the distribution formula for the Pennsylvania share (more than \$1 billion) of the national \$25 billion settlement from opioid drug manufacturers. More information will be coming soon.

Final Distributions of ARP Funds Being Made Tomorrow

On Tuesday, August 17, State Treasurer Stacey Garrity will process the final round of funding to municipalities that applied for ARP funds. Also, in late August, a smaller supplemental deposit will be issued to each municipality that applied. This deposit will represent the reallocation of ARP funds for which no application was made (totaling less than \$1 million). Please make sure that your township clients are on the lookout for that supplemental deposit of ARP funds.

Recent Decisions

Former Township Employee Loses Whistleblower Bid

In *Bjorhus v. Aston Twp.*, No. 977 C.D. 2020, 2021 WL 3355009 (Pa.Cmwlt. Aug. 3, 2021), the Commonwealth Court rejected the claim of a former employee who alleged that she made numerous good-faith reports of wrongdoing and/or waste by the township and that she was terminated in retaliation in violation of the Whistleblower Law.

Before trial, the former employee sought to exclude from evidence a financial audit report on the basis of hearsay and because she had not been allowed to examine the underlying documents. The trial court admitted the audit report and ultimately ruled that the former employee had failed to establish any instance of wrongdoing or waste while there was evidence that the township terminated her based on performance issues.

On appeal, the Commonwealth Court agreed with the former employee that the audit report was hearsay because the township offered it in support of its argument about the former employee's performance deficiencies. It also agreed that the audit report was not subject to the business records or official records exceptions because the township did not offer it through a township custodian or explain that the report was an official record of the township. However, because the author of the audit report was cross-examined at trial on its contents, the audit report was admissible hearsay evidence.

As for the Whistleblower Law claim, the court noted that it could not determine whether the trial court applied the correct legal standard because the Rule 1925(a) opinion suggested that the former employee needed to prove actual wrongdoing on the part of the township whereas the standard is just that she made a report that, if proven, would constitute a violation and that she had a reasonable basis to believe the report was true when made. In any event, there was sufficient evidence that the township terminated her for legitimate reasons that were not pretextual in nature.

Court Upholds Constitutionality of Act 111 of 2018

In *Hutchison v. Annville Twp. (Workers' Compensation Appeal Bd.)*, ___ A.3d ___, 2021 WL 34829996 (Pa.Cmwlt. Aug. 9, 2021), the court affirmed the constitutionality of Act 111 of 2018, which added Section 306(a.3)(1) to the Workers' Compensation Act. It held that while the General Assembly "may not delegate the future enactment of standards, it may adopt as its own an existing set of standards, and doing so in Act 111 did not unconstitutionally delegate its legislative authority."

Upcoming Educational Offerings

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

These Regional Forums are PSATS' first major return to in-person educational events and offer a variety of CLE opportunities. The next two will take place on August 17 in Grantville, Dauphin County, and August 24 in Canonsburg, Washington County. For more information go to <https://www.psats.org/psats-regional-forums/>.

[Best Practices for 'Quality of Life' Enforcement – 9/8 Webinar \(1 CLE\)](#)

This session will cover a variety of common "quality of life" matters for townships, including managing short-term rental issues, fireworks, and numerous property maintenance challenges and will leave you with best practices to better position your township to be proactive.

[Overtime and Other Employee Pay Issues – 9/15 Webinar \(1 CLE\)](#)

This webinar will cover a variety of employee pay-related issues, including which of your township employees are eligible for overtime pay, when employees must be paid for on-the-clock and off-the-clock work, how to calculate overtime pay, and the differences between state and federal laws governing overtime pay.

[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 – Three Dates & Locations (5 CLE)

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 \(5 CLE\)](#)

[2021 Pennsylvania Association of Zoning Officials Seminar \(Central\) - 10/19 \(5 CLE\)](#)

Topics will include zoning for controversial uses and intergovernmental cooperation for city, town, suburban and rural zoning, and solar farms (full agenda not finalized).

[2021 Pennsylvania Association of Zoning Officials Seminar \(West\) - 10/21 \(5 CLE\)](#)

Topics will include intergovernmental cooperation in city, town, suburban, and regional zoning (full agenda not finalized).

[2021 Pennsylvania Association of Zoning Officials Seminar \(East\) - 11/9 \(5 CLE\)](#)

Topics will include effective enforcement of municipal code and zoning violations, must-have checklists for zoning hearing board meetings, and intergovernmental cooperation in city, town, suburban and regional zoning (full agenda not finalized).



This biweekly newsletter for members of the Pennsylvania State Association of Township Solicitors is intended to focus on news and matters of interest to solicitors, share case updates in a timely manner, and provide details about upcoming training opportunities. Email comments and suggestions to Scott Coburn at scoburn@psats.org.



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