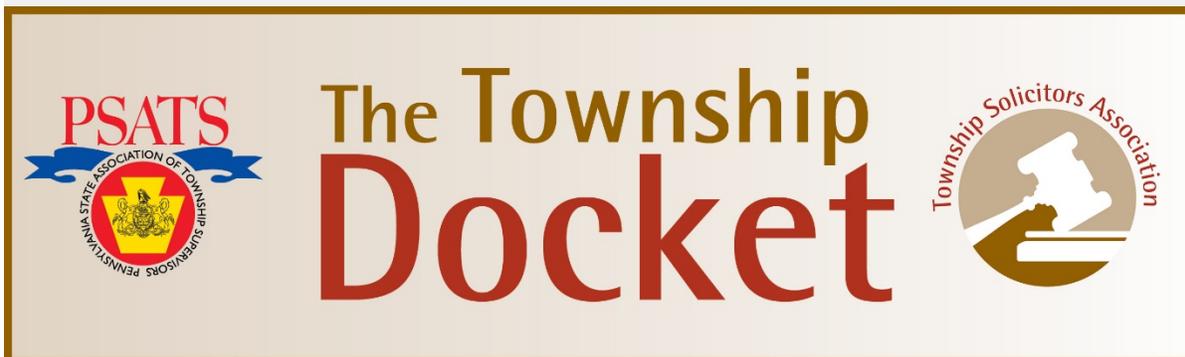


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Newsletter of the Pennsylvania State Association of Township Solicitors

September 27, 2021

Headlines

Virtual Solicitors Seminars Coming Up on 9/28, 10/7, and 11/4

As a reminder, all three of PSATS' Fall Solicitors Seminars have been converted to virtual events (including tomorrow's seminar) to allow you to better take advantage of your time (and while the PACLE Board permits all 12 CLE hours to be obtained via distance learning!).

For more information and for the agendas for PSATS' Fall Solicitors Seminars, click on the links in the "Upcoming Educational Offerings" section below.

ARP Update: Have Your Township Clients Compared Their 2019 and 2020 Revenue Yet?

PSATS has noticed recently that many members have not yet taken advantage of the American Rescue Plan (ARP) "revenue replacement" calculator created by the Government Finance Officers Association and available on the ARP resource page at www.psats.org. It is of critical importance to townships that they determine whether they lost revenue from 2019 to 2020. If so, they can "replace" that lost revenue with ARP funds and have much greater flexibility in how to spend those dollars. Please encourage your township clients to run that calculation before spending any of their ARP funds. To access the calculator, [click here](#).

Senate Passes RTKL Vexatious Requester Relief; Bill Now Moves to House

The Senate has passed [SB 552](#), which would allow townships to petition the Office of Open Records for relief from a vexatious requester. A "vexatious requester" would be someone who uses the Right-to-Know Law with malicious intent to intimidate, harass, or punish an agency, resulting in the waste of taxpayer dollars and resources. PSATS supports SB 552, which would address a PSATS resolution. The bill is now awaiting committee assignment in the House.

Recent Decisions

Incorporating Municipalities Retain Power to Obtain Municipal Authority Assets Even After Act 73 of 2012

In *In re Chester Water Authority Trust*, ___ A.3d ____, 2021 WL 4200770 (Pa.Cmwlth. Sept. 16, 2021), the Commonwealth Court confirmed that Section 5622 of the Municipality Authorities Act (MAA) authorizes a municipality to unilaterally obtain an authority and/or its assets, even where the authority has expanded to provide services outside the border of the municipality and changes have been made to its governing body in the aftermath of Act 73 of 2012.

In 1939, the City of Chester incorporated the Chester Water Authority (CWA), which later expanded its services into Delaware County and other parts of Chester County. Originally, the City of Chester appointed all five CWA directors. With the passage of Act 73 of 2012 amending the MAA to include Section 5610(a.1), which requires board representation from counties receiving authority services, CWA changed to a nine-member governing body (three from the City of Chester, three from Delaware County, and three from Chester County).

In 2017, Aqua made a bid to purchase CWA's assets for \$320 million, which CWA rejected. CWA later created a trust with it as the settlor and three board members as the trustees. It planned to transfer its assets into the trust. Aqua and the City of Chester objected to that proposed action and argued before the trial court that only the City of Chester had the power to transfer the assets of CWA because it was the incorporating municipality.

The trial court ruled that any transfer of CWA's assets would be conducted by CWA's governing body, not the City of Chester.

The Commonwealth Court reversed. It held that Section 5622(a) of the MAA continues to vest municipalities with statutory power to compel the conveyance of authorities and/or their assets and the addition of Section 5610(a.1) through Act 73 of 2012 did not supersede that power. It also found that the General Assembly, when adding Section 5610(a.1), "merely intended to reconfigure the numerical and geographical organization of a 'governing body' or 'board' of a water authority that services more than one county." However, there was no language in Section 5610(a.1) that "could reasonably reflect an intent to displace or otherwise interfere with" settled case law involving Section 5622(a). The court further held that while Section 5622 "dictates the power of a municipality to demand and obtain the conveyance of an authority and the assets it possesses, [Section 5610(a.1)] creates the authority's governing body or board, which, per section 5607 of the MAA, manages and controls the daily and operational affairs of the authority."

Judge Wojcik dissented. He argued that when reading Sections 5610(a.1) and 5622(a) together, "the General Assembly has impaired the City's ability to unilaterally make decisions for the Authority and acquire the project without the approval of the other two municipalities represented by the Authority."

Court Upholds 7% Township Amusement Tax Due to Existing Prior Tax Ordinance

In *Rausch Creek Off-Road Park, LLC v. Tremont Twp.*, ___ A.3d ____, 2021 WL 4268249 (Pa.Cmwlth. Sept. 21, 2021), the Commonwealth Court ruled that a township was permitted to assess a 7% tax on amusements. In so holding, the court rejected Rausch Creek's argument that Section 8402(c)(2) of the General Local Government Code capped the township's taxing authority at 5% because Section 8402(c)(2) merely required that the township had an amusement tax on or before December 31, 1997, which the township did.

Section 8402(c)(2) provides that a municipality which "has on or before December 31, 1997 levied . . . an amusement [tax] may continue to do so, at a rate which does not exceed the effective rate collected by the municipality on December 31, 1997, or 5%, whichever is greater."

When it sued Rausch Creek to collect on unpaid amusement taxes, the township argued that it could levy a rate higher than 5%. Rausch Creek argued that because the township repealed the prior amusement tax ordinance when it implemented a new one in 2018 instead of amending it, the township was limited by Section 8402(c)(2).

The Commonwealth Court ruled that the distinction argued by Rausch Creek was “immaterial in determining the maximum amusement tax rate the Township can levy.” Instead, what matters is that the township had an amusement tax ordinance in place on or before December 31, 1997. The court stated that a “conclusion to the contrary would result in a perilous failure to ascertain the intent of the legislature based on the statute’s plain language.”

Upcoming Educational Offerings

[2021 Solicitors Fall Seminar \(West\) - 9/28 \(5 CLE\)](#)

Topics will include: 1) Municipal Regulation of 5G Wireless Facilities in the Wake of New PA Act 50; 2) Recent Trends in Municipal Health, Safety, and Welfare Legislation; 3) Our Board is Divided – What Now?; 4) Police Personnel Management: Navigating the Rules of Act 57 and 59; and 5) Legal & Legislative Update.

[Everything You Need to Know about Township Vacancies – 9/29 Webinar](#)

In this webinar, we will discuss all the tricky issues that arise when a vacancy occurs on a township board of supervisors, including accepting letters of resignations (or having letters of resignation withdrawn), calculating the timing of required actions, and the process for convening the vacancy board. It will also highlight ways to make the process of filling vacancies as smooth as possible and provide best practices for conducting interviews with potential candidates.

[Perils of the Digital World: An Employer’s Guide to Dealing with Data Breaches – 10/6 Webinar](#)

Data breaches are seemingly constantly reported in the news. Not only are municipal governments not immune, they are prime targets. In this webinar, learn about the most common ways that employers suffer from data breaches and the best practices to put your township in a position to avoid breaches and know how to respond in the event that a breach occurs.

[2021 Solicitors Fall Seminar \(Central\) - 10/7 \(5 CLE\)](#)

Topics will include: 1) Municipal Legal Update Game Show; 2) Townships, Social Media, and the First Amendment; 3) Signs, Spot Zoning, and Short-Term Rentals; and 4) Legal & Legislative Update. The final topic will be confirmed shortly.

[Hot Topics in Planning: Storefront Vacancies, Recovery & Multifamily Impacts – 10/13 Webinar](#)

In this webinar, representatives of the Montgomery County Planning Commission will cover several new and emerging areas in the planning world and their efforts to address them. They will review the impacts the COVID-19 pandemic has had on commercial environments and how those impacts might continue. They will also share suggestions on what municipalities and developers are doing or could do in the future to address the pandemic’s impacts on their commercial areas. In addition, they will address the uptick in the number of multi-family residential developments that have been proposed or are in development and review new research on the impacts of multifamily housing and how the COVID-19 pandemic impacts this residential segment.

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

Topics will include zoning for controversial uses; best practices for “quality of life” enforcement; intergovernmental cooperation for city, town, suburban, and rural zoning; solar farms; legal and legislative update; and signs, spot zoning, and short term-rentals.

[How to Use Your Solicitor Efficiently and Effectively – 10/20 Webinar](#)

This session will highlight real-life experiences and ideas that the presenters have implemented with their municipal clients and leave you with practical advice that you can implement to maximize your municipality’s legal budget.

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

Topics will include municipal regulation of 5G wireless facilities; how different communities approach hot topics in zoning; intergovernmental cooperation in city, town, suburban and regional zoning; and a legal and legislative update (full agenda not finalized).

[2021 Solicitors Fall Seminar \(East\) - 11/4 \(5 CLE\)](#)

Agenda not yet finalized – stay tuned.

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

Topics will include navigating municipal ethical and legal gray areas; effective enforcement of municipal code and zoning violations; must-have checklists for zoning hearing board meetings; intergovernmental cooperation in city, town, suburban, and regional zoning; and zoning for controversial uses.



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. You can access past newsletters under the “Newsroom” tab when you are signed in at psats.org. Email comments and suggestions to Scott Coburn at scoburn@psats.org.



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