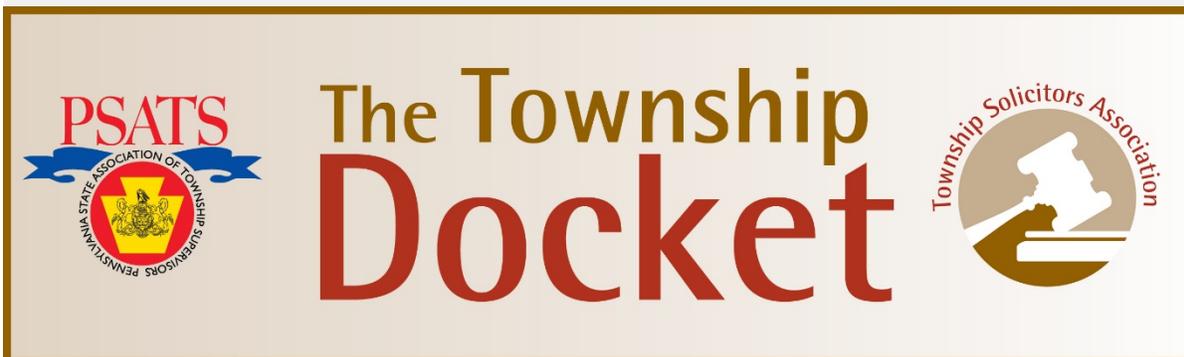


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Newsletter of the Pennsylvania State Association of Township Solicitors

November 22, 2021

Headlines

Virtual PSATS CLE Seminar (With Ethics Credit) Added on December 15

Join your solicitor colleagues from around the state on December 15 for the final PSATS Virtual Solicitors Seminar of the year. Topics include 1) Collective Bargaining in the Public Sector (and the impact that the infusion of ARPA funds is having on it); 2) It's Raining Lawsuits – Trends in Municipal Stormwater Litigation; 3) Implementing PA's New Police Background Check and Mental Health Laws; and 4) Should I Do That? – Common Municipal Ethics Issues. The final topic will be finalized shortly. For more information or to register, go to learn.psats.org and click on "Seminars."

PACLE Extends Live Virtual and On-Demand CLE Options through 2022

The Pennsylvania Continuing Legal Education Board recently announced the CLE requirements for compliance periods ending in 2022. Attorneys must earn six credits through live-online programming or in-person events. Up to six credits may be completed through prerecorded online courses. Only credits earned through live-online programming or in-person events will be eligible for carryover credits. PSATS offered more than 50 hours of live-online and prerecorded CLEs in 2021 (plus significant in-person opportunities) and will offer more of the same in 2022.

Recent Decisions

Court Reverses Retroactive Variance for Freestanding Front-Yard Garage

In *Plum Borough v. Koromvokis*, No. 179 C.D. 2021, 2021 WL 5286734 (Pa.Cmwlth. Nov. 15, 2021), the Commonwealth Court reversed the award of a

dimensional variance retroactively authorizing a freestanding garage in the front yard of a property because the zoning hearing board was without substantial evidence to justify a hardship finding.

The borough's building code official informed the property owner that he was in violation of the zoning ordinance because he built the garage, which had a street-facing edge less than 3 feet from the road, without approval. The property owner requested the variance because the property's grade was steep and a retaining wall would be required to build anything further up the hill. The zoning hearing board approved the variance, and the trial court affirmed after taking no additional evidence.

The court ruled that the zoning hearing board abused its discretion in granting the variance. It found that the property owner's "own words fatally undermine the idea that he could not have built a garage on the Property without variance relief. ... [T]he challenge facing [the property owner] here was not that he *could not* build the garage elsewhere; rather it was that he *did not want* to build it elsewhere." (emphasis in original).

Court Rejects Natural Gas Company's Bias Claim Against Township Supervisor

In *Range Resources – Appalachia, LLC v. Cecil Twp. Bd. of Supervisors*, No. 2020-7130 (Washington C.C.P. Nov. 16, 2021), a trial court rejected a natural gas company's request for de novo review of a denial of a conditional use application and found no bias on the part of the board due to the actions and "advocacy" of the board chair, who asked 115 questions during the hearing.

The court noted that many of the questions that the board chair asked were questions submitted from the audience (the board advertised that written comments would be read into the record) that she read aloud so that Range could respond. It also noted that her questions neither appeared aggressive nor were asked in an aggressive manner and that she referred to some recommendations from a grand jury report as an expression of her personal concerns about fracking. The court also upheld the grant of standing to three individuals who lived between a half-mile and a mile from the proposed natural gas well site.

Legislative Update

Bill Reaffirms Prohibition on Municipal Regulation of Firearms

The Senate recently passed SB 448, which would reaffirm the existing prohibition on municipal regulation of firearms and ammunition. The bill would allow persons and organizations adversely affected by a municipal ordinance adopted in violation of existing law to seek damages attributable to the violation in an appropriate court, including the awarding of reasonable expenses by the court if the judgment is against the municipality.

Bill Aims to Protect Public Safety Officials

The House passed HB 1546, which would establish that no person may publicly post, display, or provide to a third party the home address or telephone number of any public safety official or their spouse or child knowing the person is a public safety official. A public safety official includes a law enforcement officer. The bill is now pending committee assignment in the Senate.

Upcoming Educational Offerings

[Preparing for an Audit of ARPA Expenditures: What to Do Now – 11/22 Webinar \(1 CLE\)](#)

This webinar is designed to address the potential audit of township expenditures of ARPA funds by the federal government. Ryan Gonder and Tim Horstmann of McNees Wallace & Nurick will review the process, the most recent guidance and/or regulations that townships and the federal government will be following, what townships need to do to prepare for a potential audit, and other timely advice as practicable.

[2021 Virtual Fall Solicitors Seminar – 12/15 Virtual Seminar \(4 Substantive, 1 Ethics CLE\)](#)

Topics will include collective bargaining, trends in municipal stormwater litigation, background and mental health checks for municipal police officers, and handling common municipal ethics issues.

[Right-to-Know Law Q&A – 12/16 Webinar \(1 CLE\)](#)

This webinar is your opportunity to get answers to all your Right-to-Know Law-related questions (or stump the presenters!). George Spiess with the Pennsylvania Office of Open Records and Scott Coburn with PSATS will be prepared to cover all sorts of issues, from pulling records from databases and drafting affidavits to when is an appropriate time to invoke a 30-day extension and much more. If you would like to submit questions beforehand to make sure that they get covered, please send them to scoburn@psats.org.

[Should We Have an Ordinance for That? – 1/12/22 Webinar \(1 CLE\)](#)

In this webinar, representatives from the Tri-County Regional Planning Commission will review key issues that are important to your township's comprehensive planning and implementation efforts (using Susquehanna Township as an example), including infrastructure, land development, open space, housing/building stock, cultural resources, and transportation. They will also discuss how you can most effectively use the tools in the Planning Toolkit developed by the commission.

[Our Board is Divided – What Now? – 1/19/22 Webinar \(1 CLE\)](#)

Occasionally, a township board will be politically or philosophically divided to the point that it makes it very difficult to operate. In this webinar, we will discuss a variety of common "divided board" issues, including filling vacancies on the board of supervisors, what to do when a supervisor abstains from voting to avoid controversial issues, the role of the chair in bringing order to the meeting, and the rights of supervisors to address topics that are not on the agenda.

[How to Handle Claims under the Heart and Lung Act – 2/2/22 Webinar \(1 CLE\)](#)

Many public employers do not understand their rights and liabilities under the Heart and Lung Act. As the result, improper benefits are provided, and municipalities expend significant costs that may have been avoided. This webinar, presented by Scott Blissman and Ryan Cassidy of Eckert

Seamans, will help you to identify who is and is not eligible to receive the generous benefits provided under the act, what they receive, and when and how benefits can be terminated. Learn to avoid the common mistakes made by employers that result in significant liability.



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.



Pennsylvania State Association of Township Supervisors

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