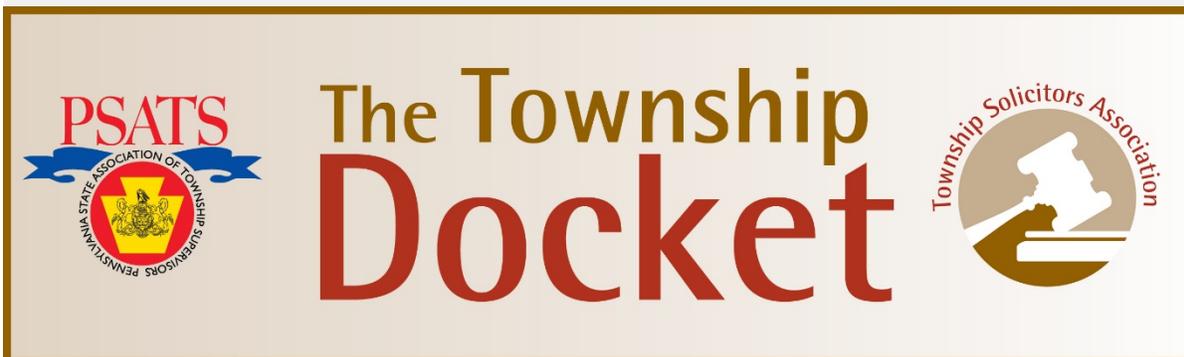


Click [here](#) to view this email in your browser.



Newsletter of the Pennsylvania State Association of Township Solicitors

December 6, 2021

Headlines

Reminder – Virtual CLE Seminar (with Ethics Credit) on December 15

You can earn that ever-elusive ethics CLE credit (and four more substantive) during the final PSATS Virtual Solicitors Seminar of the year on December 15. 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."

Recent Decisions

Court Enjoins Enforcement of School Board's Public Meeting Policy

In *Marshall v. Amuso*, ___ F.Supp.3d ___, 2021 WL 5359020 (E.D.Pa. Nov. 17, 2021), a federal district court found that a school board's public meeting policy likely violates the First Amendment's prohibition on viewpoint discrimination and enjoined its further use.

The school board at issue adopted a public meeting policy that allowed any taxpayer, school employee, or student five minutes to make public comment. That comment was subject to certain restrictions, including that they must announce their name, address, and group affiliation, if applicable. The presiding officer may also interrupt or terminate comments if they are lengthy, personal, abusive, obscene, or irrelevant or have the speakers removed by police. The policy also prohibited offensive, obscene, or otherwise inappropriate banners and signs.

With the start of the COVID-19 outbreak, the school board shifted to virtual meetings and allowed written submissions from "speakers" in advance of meetings. It screened the submissions for violations of the policy and informed the "speakers" if their comments were rejected. That practice continued until the school board returned to in-person meetings in March 2021.

Four school board meeting attendees challenged the policy after their comments were interrupted or terminated by the school board as being in violation of the policy. In one instance, the school board allowed the attendee to give public comment without interruption but later took the video of those comments off the school district's website after the school board deemed after-the-fact that they violated the policy. In other instances, it censored and terminated comments deemed abusive because they included offensive racial stereotypes. Several of the plaintiffs expressed concerns about being thrown out of meetings as a result of their comments.

The court found that the school board applied the term "disruptive" to "disruptive *ideas* rather than disruptive *conduct*" (emphasis in original) and that the school district could not meet its burden that the as-applied challenge to the policy is unlikely to succeed on the merits. As for the facial challenge, the school board presented no examples of guidance or other tools to assist in properly applying the policy to public comments and instead allowed the presiding officer's own views to shape "what counts" as irrelevant, intolerant, abusive, offensive, or inappropriate. The court also held that the policies were overbroad because they "prohibit a broad array of constitutionally protected speech." It found that the requirement that speakers state their home address was an unreasonable restriction. The court also rejected numerous other aspects of the policy in granting injunctive relief to the meeting attendees.

Property Owner Ordered to Rebuild Concrete Path and Stairs Demolished in Violation of Zoning Permit

In *Taiani v. Zoning Hearing Bd. of Borough of Wilkesburg*, 1484 C.D. 2019, 2021 WL 5443664 (Pa.Cmwlth. Nov. 22, 2021), the court affirmed an order compelling that a common sidewalk and stairs be rebuilt after the property owner disregarded the borough's zoning permit approving construction of a fence and retaining wall that required the common sidewalk and stairs to "remain as-is."

The zoning hearing board affirmed the notice of violation and found no basis to grant a variance or special exception. It also affirmed that the property owner was aware of the terms and conditions of the permit. The Commonwealth Court found, among other things, that any hardship that existed was created by the property owner and that the time for him to complain had passed. Instead, he should have addressed the issue in his permit application. It also rejected a litany of other issues raised by the property owner on appeal.

Upcoming Educational Offerings

[2021 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

David M. Sanko, Executive Director

4855 Woodland Drive
Enola, PA 17025