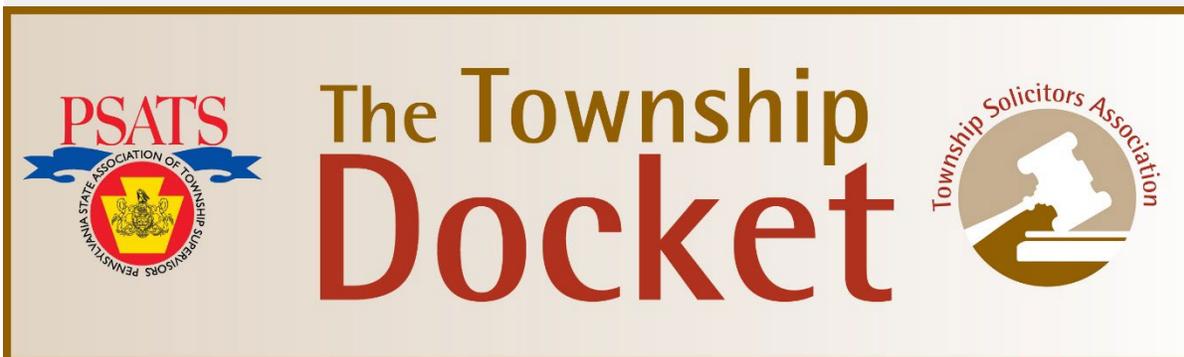


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Newsletter of the Pennsylvania State Association of Township Solicitors

January 18, 2022

Headlines

PSATS Hosting Town Halls This Week on ARPA Final Rule

On Thursday, January 20, PSATS will be hosting two members-only town halls in which it will review the final rule issued by the U.S. Department of the Treasury relating to municipal use of American Rescue Plan Act funds.

The final rule contains significant new flexibility by allowing townships to opt for a standard lost revenues allowance of \$10 million to be used for general government purposes. Learn about what this means for your township clients, as well as broadened uses for water and sewer and pandemic-related expenses. We will also cover reporting requirements.

[Click here](#) to register for the 11 a.m. session and [click here](#) to register for the 3 p.m. session.

Smell of Marijuana Cannot Be Sole Factor in Warrantless Search

The Pennsylvania Supreme Court recently ruled in *Commonwealth v. Barr*, ___ A.3d ___, 2021 WL 6136363 (Pa. Dec. 29, 2021), that due to the legalization of medical marijuana in Pennsylvania, law enforcement officers may not engage in a warrantless vehicle search based solely on the smell of marijuana in the vehicle. Chief Justice Baer, writing for the majority, stated that “the odor of marijuana may be a factor, but not a standalone one, in evaluating” whether probable cause exists to conduct a warrantless search. To read the full opinion, [click here](#).

Are Your Township Clients’ Job Descriptions Accurate and Up to Date?

The pandemic has accelerated necessary technology improvements and, by extension, requests from employees to work from home. Whether work-from-home arrangements work in the public sector is debatable and certainly limited to job functions that do not require in-person engagement. These requests for work-from-home arrangements or remote work have highlighted the necessity for all employers to review, revise, and update job descriptions. [Click here](#) to read the full article by Robert A. Vernon of Campbell Durrant.

Recent Decisions

Transportation Services with Vehicle Storage Not Akin to Towing and Storage

In *Cicconi v. Zoning Hearing Bd. of Tinicum Twp.*, No. 328 C.D. 2021, 2022 WL 30145 (Pa.Cmwth. Jan. 4, 2022), the Commonwealth Court ruled that a zoning hearing board properly denied an application seeking approval to park vehicles used to transport the aged and infirm on a property previously used as a towing service and storage yard because those uses were not sufficiently similar.

The court also ruled that the applicant failed to properly preserve an argument that the zoning hearing board violated Section 908 of the Municipalities Planning Code and the applicant's due process rights by conferring with the zoning officer in executive session regarding the decisions to be rendered.

Mandamus Action to Compel Permit Issuance Mooted After Applicant Pays Stormwater Fee Under Protest

In *Roosevelt Holding, LP v. Sampere, Zoning Officer of West Manchester Twp.*, No. 410 C.D. 2021, 2022 WL 29897 (Pa.Cmwth. Jan. 4, 2022), the court ordered dismissal of a mandamus action because the applicant secured the relief sought through other means.

Roosevelt sought an access drive permit in conjunction with a land development plan. The township advised Roosevelt that the permit had been approved but also came with a stormwater management fee of almost \$22,000. Roosevelt then attempted to pay the township \$85 for the zoning permit but nothing for the stormwater management fee, began constructing the access drives and filed a mandamus action in which it argued that the township had no authority to levy a stormwater management fee. After the zoning official issued a stop work order, Roosevelt paid the fee under protest and received the permit.

Considering that Roosevelt obtained the permit it sought, the court held that "Roosevelt's own conduct rendered its lawsuit moot, thereby depriving us, and Common Pleas, of the ability to rule on this matter's merits."

Court Reverses and Remands ZHB's Rejection of Wind

Facility/Meteorological Tower In *Atlantic Wind, LLC v. Zoning Hearing Bd. of Penn Forest Twp.*, No. 585 C.D. 2020, 2022 WL _____ (Pa.Cmwth. Jan. 12, 2022), the court ruled that a township zoning hearing board wrongly concluded that the zoning ordinance prohibited a proposed wind energy/wind turbine facility as a second proposed use (*there was no evidence that a first use as a government facility had ever been approved by special exception*) and that a meteorological tower was not permitted by special exception and/or accessory use (*the zoning officer had concluded the tower was an integral part of the overall project*). It also remanded back to the zoning hearing board for consideration of various noise metric issues because it did not provide any explanation of its resolution of the factual issues involved.

Legislative Update

Last week, the Pennsylvania House passed HB 2148, which would authorize local governments to voluntarily place legal notices on a website, in addition to the required newspaper advertisement. If the newspaper fails to timely publish the advertisement, the ad placed on the website, along with proof of publication and payment to the newspaper, would satisfy the legal

requirements for advertising. HB 2148 is now before the Senate.

Upcoming Educational Offerings

[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 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. Consequently, 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 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.

[2022 Solicitors Spring Seminar – 4/25/22 In-Person \(5 CLE\)](#)

This seminar will cover a wide variety of emerging and important trends and issues vital to the practice of every municipal solicitor. Don't miss this opportunity to hear from experts and network with your peers from around the state.



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.



Pennsylvania State Association of Township Supervisors

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