



LOCAL GOVERNMENT COMMISSION

Quarterly Legal Update

Issue 1, 2026

Legislative Updates:

The Local Government Commission has introduced several bills this session, including:

HB 1651 (Freeman) was signed into law as **Act 59** of 2025, and **SB 862** (Kim) was signed into law as **Act 9** of 2026. These bills amend the Second Class Township Code and the Borough Code, respectively, to provide for expedited processes to fill vacancies.

SB 1036 (Keefer) was signed into law as **Act 7** of 2026. This bill incorporates Act 96 of 2020, the reenactment and amendment of the First Class Township Code (Act 331 of 1931) into the PA Consolidated Statutes as part of Title 73 (Townships).

The Commission also introduced a bill package to allow for memorials honoring first responders. **HB 1738** (Freeman) and **SB 993** (Keefer) amend the Borough Code, Third Class City Code, and County Code. **HB 1727** (Miller) and **SB 972** (Kearney) amend the Second Class Township Code.

Continued on page 6 >>

Civil Rights

Olivier v. City of Brandon, Mississippi, 146 S.Ct. 916 (Mar. 20, 2026). A street preacher (Plaintiff) was convicted for violating a city ordinance that restricted expressive activities near a public amphitheater around the time of events. He pleaded no contest, paid a fine and did not appeal his conviction.

Thereafter, Plaintiff brought §1983 action against the city for injunctive and declaratory relief, alleging the city ordinance violated the First Amendment's Free Speech Clause by placing him to specified protest areas by the amphitheater. As a remedy, the complaint sought a declaration that the ordinance infringes the First Amendment and an injunction preventing city officials from enforcing the ordinance in the future. The United States (U.S.) District Court granted summary judgment for the city holding that *Heck v. Humphrey*, 512 U.S. 477 (1994) (which prohibits the use of §1983 to challenge the validity of a prior conviction or sentence so as to obtain release from custody or monetary damages), bars the suit from going forward. The U.S. Court of Appeals affirmed and denied rehearing and rehearing *en banc*. The U.S. Supreme Court granted Certiorari and reversed and remanded.

The U.S. Supreme Court held that a plaintiff may bring a §1983 action seeking prospective relief (e.g., an injunction)

challenging a law's constitutionality even if the plaintiff was previously convicted under that law, as long as that lawsuit does not seek to invalidate the prior conviction. Because Plaintiff was merely seeking prospective relief to prevent future enforcement of an allegedly unconstitutional law (the city ordinance), his claim was permitted and not barred by the holding in *Heck*.

Election Law

Dillon v. Lawrence County Board of Elections, 2026 WL 742750 (Pa. Cmwlth., Mar. 16, 2026).** Appellant received the highest number of write-in votes for township supervisor compared to the runner-up (Runner Up). The county board of elections (Board) intended to certify Runner Up as the winner because Appellant was registered to vote in another township on election day, thereby making him ineligible to serve as a supervisor under Section 401 of the Second Class Township Code, which requires a supervisor to be an elector of the township.

Appellant appealed to the court of common pleas to stop the Board from certifying the election and requested a hearing. The court denied the appeal leading to the certification of Runner Up as the winner. On appeal to Commonwealth Court, Appellant argued that the Board exceeded its authority by disqualifying him as the winning write-in candidate.

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Commonwealth Court reversed, concluding that the Board lacked the authority to invalidate lawfully cast votes for the purpose of denying a candidate's victory. To the extent that the Board had concerns regarding Appellant's qualifications to hold office, the Board's recourse was limited to reporting the findings to the district attorney under Section 1404(d)(3) of the Code (if the county board or elections discovers any error or fraud, it must accurately calculate and certify the votes notwithstanding any incorrect or fraudulent returns, and report the matter to the appropriate district attorney for further action).

Government Accountability

Galette v. New Jersey Transit Corp., 146 S.Ct. 854 (Mar. 4, 2026). A New York resident was struck and injured by a New Jersey bus; and a Pennsylvania resident was injured when the car he was riding in, and traveling down a Philadelphia street, was struck by a New Jersey bus. Each plaintiff (collectively, Plaintiffs) sued NJ Transit in their respective home state courts. NJ Transit moved to dismiss both lawsuits, arguing that it is an arm of New Jersey and thus entitled to New Jersey's sovereign immunity.

New York held that NJ Transit is not an arm of New Jersey and that plaintiff's suit could proceed. The Pennsylvania (PA) Supreme Court concluded that NJ Transit is an arm of New Jersey, applying its own six-factor test. Under that test, the PA Supreme Court concluded that NJ Transit is an arm of New Jersey and dismissed the PA plaintiff's suit. The United States Supreme Court consolidated the cases and granted Certiorari to resolve the conflict as to whether a state-created transit corporation qualifies as an arm of the state and thus entitled to interstate sovereign immunity.

The Supreme Court observed that historically, the Court treated a corporation as an independent legal person, one that can sue, be sued, contract, and hold property. The Court also applied the same reasoning to cities and counties created as municipal corporations. The Court noted that beginning in the mid-20th century, it began to consider additional features of an entity's relationship with the State in the arm-of-the-state inquiry but kept the same core question – did the state structure the entity as legally separate. The Court stated that if the state creates an entity as a corporation with traditional

Sovereign immunity is 'personal' to the State and extends only to arms of the State itself, not to legally independent entities that the State creates. Whether an entity is 'an arm of the State...is a question of federal law' answered by considering the 'provisions of state law that define the agency's character.'...To the extent New Jersey, and other States, created... corporate entities intending that they would remain part of that State and that the State would formally assume their liabilities, the States are always free to amend their laws.

- Galette v. New Jersey Transit Corp.

powers, it strongly indicates “legal separateness”, an intentional avoidance of liability, although it is not dispositive. Another, slightly lesser factor is whether the state is legally responsible for the entity's debts, with practical realities such as state subsidies mattering less than formal legal liability.

To New Jersey Transit's argument that because it was described in law as serving “public and essential government functions,” it should be entitled to an arm-of-the-state designation, the Court held that the analysis is not focused on such delegation, but, rather, “whether the State has chosen to serve those public functions through its own apparatus or through a legally separate entity.”

The Court noted that although its cases suggest that courts may consider the degree of control the state exercises over the entity as a factor in an arm-of-the-state analysis, they “should do so with caution” (citation omitted) because all state-created entities are controlled to some degree. Thus,

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even heavily controlled corporations may be designated as separate from the state.

The Court held that rather than focusing on the label a state places on an entity, it must assess whether the state structured the entity as legal separate. Although NJ Transit was labelled as an “instrumentality of the State”, “instrumentality” lacks the historical weight that corporate form does and “says little about whether an entity is an arm of the [s]tate.” (Citation omitted.) The Court noted that the New Jersey’s Tort Claims Act and the New Jersey Contractual Liability Act specify that entities with sue-and-be-sued authority are *not* part of the state.

Consequently, the U.S. Supreme Court held that NJ Transit is not an arm of New Jersey and therefore, not entitled to share in New Jersey’s interstate sovereign immunity. The Court affirmed the judgment of the New York Court of Appeals; reversed the judgment of the Pennsylvania Supreme Court; and remanded both cases.

Where the Legislature provides for mandatory and exclusive statutory remedies, the court is without power to act under the doctrine of exhaustion of administrative remedies, unless those remedies have been exhausted. (Internal citations omitted.)

-Madsen v. Northampton County Court of Common Pleas

Madsen v. Northampton County Court of Common Pleas, 2026 WL 771986 (Pa. Cmwlth., Mar. 19, 2026).** *Pro se* Petitioner requested documents related to his prior proceedings to assist in filing a petition under the Post Conviction Relief Act. Petitioner made several Right-to-Know Law (RTKL) requests for records, including transcripts, audio and video recordings, police reports, and 911 call audio. The Police Department (Department) did not respond to these requests within the required five-day period or at any time thereafter. Consequently, Petitioner filed a mandamus action in the trial court to compel the Department to provide the requested records.

The Department filed preliminary objections and argued that Petitioner failed to exhaust his administrative remedies under the RTKL. Rather, Petitioner should have filed an appeal with the Office of Open Records within fifteen business days of the deemed denial by the Department. Since Petitioner did not follow this procedure, the trial court sustained the preliminary objection and dismissed the matter with prejudice (preventing the Petitioner from filing the same matter again).

Land Use

Columbia Gas of Pennsylvania, Inc. v. Menallen Township, 351 A.3d 326 (Pa. Cmwlth., Jan. 2, 2026). In this matter of original jurisdiction, Columbia Gas (Gas Company) challenged an ordinance enacted by the township (Township) that regulated utility development, specifically concerning excavation and fees related to utility work in public streets. Gas Company sought declaratory and injunctive relief arguing that the ordinance was preempted by state law. The Township cross-filed an application for summary relief.

Regarding counts III and IV (challenges to regulations that restrict the location and methods of construction within municipal rights-of-way), Commonwealth Court found that certain provisions of the ordinance were not ripe for review because they had never been enforced against Gas Company. Moreover, the court noted that these provisions had not been enforced in the nine years since the ordinance was enacted, and Gas Company admitted that the Township had not sought to enforce them. “[A] court must resolve justiciability concerns as a threshold matter before addressing the merits of the case.” (Internal citation omitted.) The court did note that if the provisions of the ordinance are later enforced, Gas Company can seek relief at that time.

Regarding the merits of Counts I and II (application and inspection fees), the court held that the application fee for excavation or opening of public streets was “at least arguably a reasonable permitting fee” and thus not preempted by state law. However, the inspection fees imposed by the Township were deemed to be utility regulations preempted under the doctrine of field preemption. The court found that these fees were not merely for inspection of permitting or entry *but were intended to cover detailed inspections of utility*

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installations, which is a function already regulated by the Public Utility Code. Consequently, the court granted partial summary relief for Gas Company on Counts I and II, declaring the inspection fees unenforceable.

West Lampeter Solar 1, LLC v. West Lampeter Township Zoning Board, 351 A.3d 383 (Pa. Cmwlth., Jan. 15, 2026). Solar energy development company (Applicant) filed an application for zoning special exception to allow development of 25-acre agrivoltaics solar farm, which would include leasing area under and around solar panels for sheep grazing, in area zoned for agricultural use and limiting non-agricultural use to five acres.

Concluding that Applicant’s project constituted nonagricultural use, the Zoning Board denied Applicant a special exception because it did not satisfy the ordinance’s size limitation. The trial court affirmed the Zoning Board’s decision.

On appeal, Commonwealth Court rejected the Applicant’s argument that terms undefined in the Zoning Ordinance should be interpreted broadly. Instead, the court found that undefined terms are to be given their “plain and ordinary meaning.” Citing to Section 107 of the Municipalities Planning Code, 53 PS. Sec. 10107, the court noted that the phrase “technological development within the agricultural industry” must be read in context with the actual circumstances. In other words, “there must be a connection between the technological advance and the preparation of agricultural products. Here, Applicant’s generation of electricity will not advance the sheep grazing enterprise.... Each use can be undertaken separately from the other.” (Internal citation omitted.)

Because the production of photovoltaic energy would be the principal use of the property, with sheep grazing being an accessory use, the court held that the proposed agrivoltaics project was not considered agricultural use under the zoning ordinances.

The equitable arguments of all parties are not trivial, but none of them drive our analysis; the unambiguous text of Section 5622(a) [of the Municipal Authorities Act] does. Section 5622(a) adapts to changing circumstances, and in doing so it accounts for at least some of the equitable concerns that arise when an authority expands and changes over time beyond its original design, however imperfectly it may do so. Any imperfections in that legislative design are the General Assembly’s concern.

-In re Chester Water Authority Trust

Municipal Authorities

In re Chester Water Authority Trust, 349 A.3d 892 (Pa., Jan. 21, 2026). A municipal water authority (Authority) was created by a single municipality to meet local needs but later expanded to serve multiple municipalities across two counties. Although the founding municipality originally controlled all board appointments, the Municipal Authorities Act (MAA) was amended to require equal representation for the founding municipality and the two counties, reflecting the Authority’s broader customer base. (See Section 5610(a.1) of the MAA).

After the reconstituted board rejected a buyout offer from a private company, the Authority sought to place its assets into a trust. The founding municipality and the bidder challenged this action, arguing that the municipality retained exclusive statutory authority to transfer the authority’s assets.

The Delaware County Court of Common Pleas denied their motions for judgment on the pleadings, concluding that any transfer of assets under the MAA required unanimous approval from all governing bodies represented on

the board. Commonwealth Court reversed, holding that the statutory amendment affecting board composition did not eliminate the founding municipality's sole authority to convey assets under Section 5622(a) of the MAA (conveyance by authorities to municipalities or school districts of established projects).

On further appeal, the Pennsylvania Supreme Court disagreed. The Supreme Court held that the MAA's plain language in Section 5622(a) does not preserve indefinite "unilateral control" by the founding municipality following the legislature's restructuring of the board. Instead, the authority to approve a transfer of assets is now shared among the three represented municipalities. The PA Supreme Court reversed Commonwealth Court and remanded the case for further proceedings.

Police Power

Commonwealth of Pennsylvania v. Guo, 2026 WL 733818 (Pa. Cmwlth., Mar. 16, 2026).** The City of Pittsburgh (City) issues citations on three separate occasions to property owner (Owner) for violations of a local property maintenance code. Owner was convicted on one citation on February 21, 2023, and of the other two on July 20, 2023 (collectively, Convictions). Over one year later, on September 4, 2024, Owner filed *Nunc Pro Tunc* petitions (NPT Petitions) regard-

ing his convictions. The trial court denied Owner's NPT Petitions. He appealed to Commonwealth Court, which affirmed the trial court.

Nunc Pro Tunc is a "recognized exception to the general rule prohibiting extension of an appeal deadline." (Citation omitted). *Nunc pro tunc* relief is "a remedy to vindicate the right to an appeal where that right has been lost due to certain extraordinary circumstances." (Citation omitted.) Those extraordinary circumstances include "fraud or a breakdown in the court's operations" or if the appellant shows that the delay in filing the appeal was not due to his own negligence.

Owner's NPT Petitions stated that "I told the Judge that every house in the city has code violations. I should not be fined." At the hearing, the Owner explained that the reason he didn't timely file was because he received "too many, so many" notices.

Upon review Commonwealth Court held that the NPT Petitions offered no justification for Owner's late filing. The court determined that his explanation did not provide adequate excuse by "illustrating fraud, breakdown in the court's operation or non-negligent actions" on Owner's part. Rather, the court noted that "[Owner's] explanation instead illustrate[d] his own negligence in failing to read and understand notifications he received, which does not support nunc pro tunc relief." (Citation omitted.)

I write separately only to reconfirm that a school district's use of a "facially property-type-neutral monetary threshold[] do[es] not per se run afoul of the Uniformity Clause."...School districts have been given the authority to appeal tax assessments,...and "[f]or that to mean something, school districts must have a means of designing facially neutral, quantitatively grounded policies to create predictability and fairness in a taxing district." The violation of the Uniformity Clause in this matter is not based on the use of a facially neutral monetary threshold, but on the evidence that the School District applied its policy to intentionally exclude single-family residential properties from consideration for assessment appeals, making this case distinguishable from that in Coatesville.

*- Upper Merion Area Sch. Dist. v. King of Prussia Associates
(Cohen Jubelirer, concurring)*

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Taxation and Finance

Upper Merion Area School District v. King of Prussia Associates, 2026 WL 740636 (Pa. Cmwlth., Mar. 17, 2026). School District enacted a policy (Policy) establishing guidance on the financial criteria the School District would use in selecting properties for filing tax assessment appeals. The Policy sought to ensure that property taxes are fairly distributed by appealing “under-assessed” properties, with the district not pursuing appeals on properties assessed at \$500,00 or less.

Advisors for the School District recommended several properties for tax assessment appeals; none were single family residences. Five of the parcels were in a mall (Mall). School District filed appeals for four of the Mall parcels. The assessment appeals resulted in no changes to the Mall parcels. School District appealed to the trial court.

The trial court determined that the School District’s property selections for appeals under the Policy and the School District’s implementation of that policy violated the tax uniformity provision of article VIII, section 1 of the Pennsylvania Constitution, which provides that “[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws”. On appeal, the court affirmed the decision of the trial court, which found that the School District’s policy and its application were unconstitutional because they selectively targeted commercial and industrial properties for tax assessment appeals while excluding single-family residential properties. The School District relied heavily on earlier Commonwealth Court precedent upholding the use of a monetary threshold for selecting properties to appeal. See *Coatesville Area S.D. v. Chester County Bd. of Assessment Appeals*, 323 A.3d 61 (Pa. Cmwlth., 2024). The court distinguished the case by observing that in this matter “there were specific factual determinations that the School District...focused on commercial properties [and] expressly intended to avoid targeting any residential properties,” whereas the trial court in *Coatesville* found as fact that the policy was not intended to discriminate by targeting property subclassifications.

** Indicates that this case is UNREPORTED.
See 210 Pa. Code § 69.414

Legislative Updates: *(Continued from page 1)*

The Local Government Commission also introduced a bill package to extend the date of completion, filing, and publication of the municipal Audit and Annual Financial Report from 90 days after the close of the fiscal year to the last day of June after the close of each fiscal year. [HB 1787](#) (Sappey) and [SB 975](#) (Hutchinson) amend the Borough Code and the Third Class City Code. [HB 1720](#) (Freeman) and [SB 971](#) (Kearney) amend the Second Class Township Code.

[HB 2177](#) (Freeman) and [HB 2179](#) (Sappey) amend the Borough and Third Class City Code, and the Second Class Township Code, respectively, to provide for municipal ordinance “safe harbor”, which clarifies the requirements for the publication of a brief summary of the proposed ordinance, which shall include a description as listed and will be considered legally sufficient if subject to a legal challenge.

[HB 1194](#) (James) and [SB 871](#) (Dush) amend the Second Class Township Code to allow townships to accept irrevocable letters of credit or other security as a form of contract security.

[HB 1777](#) (Miller) amends Titles 53 (Municipalities Generally) and 35 (Health and Safety) to revise the powers of municipalities to continue an emergency declaration, designate a temporary seat of government, conduct remote meeting procedures, and provide for succession of officers during an emergency.

[HB 2361](#) (Freeman) amends the Municipal Consolidation or Merger Act to clarify procedures and addresses obstacles in the cases of a municipal consolidation or merger initiated by a petition of electors rather than by the municipal governing bodies. Additionally, the bill allows municipalities, regardless of how a merger or consolidation was initiated, to maintain existing grant eligibility for a period of time after a successful consolidation or merger. Senator Dush intends to introduce similar language in the Senate.

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