

Can a Municipal Governing Body Enter into a Contract That Will Bind Future Governing Bodies?

The Distinction Between Propriety and Governmental Functions

General Rule. When a municipal governing body, in the performance of its governmental functions, enters into a contract, there traditionally has been a limit on the term or period of time that the municipality can be bound by that contract, so that one municipal governing body does not limit or curtail the policy-making authority of a subsequent governing body.

Municipal governing bodies have the authority to enter into contracts. These contracts may involve the exercise of either governmental or proprietary functions.

A governmental function is one performed for public purposes exclusively in its public, political or municipal character. A proprietary function, on the other hand, is a function which traditionally or principally has been performed by private enterprise.¹

While distinguishing between governmental and proprietary functions can be difficult, Pennsylvania courts have often utilized a three-prong test to determine whether a specific action of a local government is one or the other. The court will consider:

- (1) [W]hether the activity is one which the governmental unit is not statutorily required to perform,
- (2) whether the activity may also be carried on by private enterprise, and
- (3) whether the activity is used as a means of raising revenue. If the answer to any of these inquiries is yes, the function is proprietary.²

Traditionally, a newly elected governing body is empowered to act on behalf of the public without being constrained by the contracts of its predecessor that would significantly weaken the new governing body's making use of its policy-making powers. Thus, historically, when a municipal governing body, in the performance of its governmental functions, enters into a contract, there has been a limit on the time that the municipality can be bound by that contract, so that one municipal governing body does not limit or curtail the policy-making authority of a subsequently elected governing body.

¹ *Boyle v. Municipal Authority of Westmoreland County*, 796 A.2d 389, 393 (Pa. Cmwlth. 2002) (citations omitted, emphasis added).

² *Boyle*, 796 A.2d at 393, citing *County of Butler v. Local 585, Service Employees International Union, AFL-CIO*, 631 A.2d 1389 (Pa. Cmwlth. 1993). See also *Lobolito, Inc. v. North Pocono Sch. Dist.*, 562 Pa. 380 (2000) (discussing the historical basis for the distinction between proprietary and governmental functions).

Applying this principle, the Pennsylvania Supreme Court, in *Lobolito, Inc. v. North Pocono School District*, emphasized the fact that agreements involving governmental bodies have long been viewed in a different light than agreements made exclusively between private parties,³ particularly where the contract involves the governmental functions of the governing body.⁴ In the exercise of its governmental functions, as distinguished from those that are business or proprietary, no municipal legislative body can take action that will bind its successors by entering into a contract that will extend beyond the term for which the members of the body were elected.⁵ The successor governing body may, however, choose to ratify the existing contract that constitutes a governmental function.

³ 562 Pa. at 384.

⁴ *Id.*

⁵ *Id.* The opinion in *Lobolito* indicates that limited exceptions may exist to the rule that one governing body may not bind a subsequent one with a contract that involves the municipality's governmental/policy-making functions. It also is indicated that any exceptions would most certainly require not only an absence of bad faith or ulterior motivation but also circumstances of great urgency and necessity in which the public interest clearly would be served by permitting the contractual commitment to be enforced.