

## Discretionary vs. Ministerial Acts and the Action of Mandamus

Perhaps the most effective way a citizen may influence municipal government is to attend and actively participate in the public meetings of the municipal governing body. Citizens have a right to make public comments at these meetings, subject to reasonable rules of the governing body. With regard to the actions of municipal officials, sanctions exist for those acts that are criminal, unethical, or which constitute an unauthorized use of funds. Nevertheless, the mere fact that a citizen disagrees with the manner in which a municipality is being run does not, in and of itself, give rise to any right to “force” the municipal officials to change or alter their decisions or their conduct.

**What Are Discretionary Acts?** Pennsylvania case law is replete with examples of discretionary powers of municipalities. Discretionary acts include taxing, issuing bonds, appointing municipal employees, inspecting properties for land use violations, passing or repealing ordinances, enforcing ordinances, erecting public improvements, and issuing licenses.<sup>1</sup> As a rule, performance of discretionary acts cannot be compelled by a court as a result of a citizen suit, because the court will not substitute its judgment for that of the municipality. Nevertheless, there is some authority which indicates that a court may compel a municipal official to exercise discretion so as to arrive at some decision.<sup>2</sup> “While mandamus does not lie to compel a government body which is vested with discretionary authority to use it in a particular manner, mandamus is appropriate to compel a government body to perform a discretionary act when it has a legally mandated duty to perform such act and has refused to do so.”<sup>3</sup>

**What Are Ministerial Acts?** A ministerial act has been defined as one that a public officer is required to perform under a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority.<sup>4</sup> Basically, if all discretionary precursors to an official act have been completed, and all that remains to be done is the act itself, courts may compel a municipal official to perform such action:

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<sup>1</sup> See *Germantown Business Association v. City of Philadelphia*, 534 A.2d 553 (Pa. Cmwlth. 1987); *McQuillin Mun. Corp.* § 51.17 (3d ed., 2004).

<sup>2</sup> *Madden v. Jeffes*, 482 A.2d 1162 (Pa. Cmwlth. 1984); *Hotel Casey Co. v. Ross*, 343 Pa. 573, 583 (1942); *Commonwealth ex rel. Kelley v. Pommer*, 330 Pa. 421, 439, 440 (1938).

<sup>3</sup> *Department of the Auditor General, Commonwealth of Pennsylvania v. State Employees' Retirement System*, 836 A.2d 1053, 1069 (Pa. Cmwlth. 2003), citing *Hugie v. Horn*, 730 A.2d 1042 (Pa. Cmwlth. 1999).

<sup>4</sup> *Meadville Area School District v. Department of Public Instruction*, 398 Pa. 496 (1960); *McQuillin Mun. Corp.* § 51.19 (3d ed., March 2017 update).

“[T]he purpose of mandamus is to compel the performance of a single ministerial act; it is not usually the appropriate remedy where the relief sought is a general course of official conduct or a series of actions.”<sup>5</sup>

**What Is an Action of Mandamus?** The procedure by which a citizen can force a municipality to take action is called a petition for a writ of mandamus. This is “a writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usually to correct a prior action or failure to act.”<sup>6</sup> One seeking a writ of mandamus against a municipality or municipal official has a heavy burden. The plaintiff must establish: (1) a clear right to relief;<sup>7</sup> (2) that a corresponding duty exists in defendants;<sup>8</sup> (3) the lack of any other adequate remedy at law;<sup>9</sup> and (4) that the plaintiff has demanded performance of the duty, and the defendant has refused to so perform.<sup>10</sup> A private plaintiff who seeks to enforce a public duty must also establish “an individual and beneficial interest in the litigation independent of that which is held by the public at large.”<sup>11</sup> As previously stated, “the courts have repeatedly held that mandamus can issue only where [a municipality] has failed to perform a ministerial duty . . . which [requires] the exercise of neither judgment nor discretion . . . .”<sup>12</sup>

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<sup>5</sup> *Dorris v. Lloyd*, 375 Pa. 474 (1953).

<sup>6</sup> Bryan A. Garner (ed.), *Black’s Law Dictionary*, 11<sup>th</sup> ed., West Group, St. Paul, Minn., 2019.

<sup>7</sup> *Philadelphia Firefighters’ Union, Local 22, et al v. City of Philadelphia*, 119 A.3d 296, 303-304 (Pa. 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; Pa. R.C.P. No. 1095.

<sup>10</sup> Pa. R.C.P. No. 1095.

<sup>11</sup> *Carino v. Board of Commissioners of Armstrong County*, 468 A.2d 1201, 1205 (Pa. Cmwlth. 1983), quoting *Dombrowski v. Philadelphia*, 431 Pa. 199, 204 (1968).

<sup>12</sup> *Anderson v. City of Philadelphia*, 348 Pa. 583, 586-587 (1994).