

**Report to the
House Resolution 167
Task Force**

Impact of Article III, section 31, of the Pennsylvania
Constitution on the Matter Before the Task Force

December 11, 1997
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The specific question I wish to address in this memorandum to the House Resolution 167 Task Force is as follows:

What, if any, would be the impact (in terms of potential conflict) of the first sentence of Article III, section 31, of the Constitution of Pennsylvania on an attempt by the General Assembly to require certain municipalities to pay for State Police services, if those municipalities do not have a municipal police force?

Article III, section 31, provides as follows, with the pertinent first sentence underlined:

§ 31. *Delegation of certain powers*

The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

Notwithstanding the foregoing limitation or any other provision of the Constitution, the General Assembly may enact laws which provide that the findings of panels or commissions, selected and acting in accordance with law for the adjustment or bargaining between policemen and firemen and their public employers shall be binding upon all parties and shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer of the Commonwealth if the Commonwealth is the employer, with respect to matters which can be remedied by administrative action, and to the lawmaking body of such political subdivision or of the Commonwealth, with respect to matters which require legislative action, to take the action necessary to carry out such findings.

The answer to the question posed is answered in a clear and scholarly manner in the treatise *Pennsylvania Constitutional Law*, written by the Honorable Robert E. Woodside, a member of the legislature for 10 years and a floor leader there, Attorney General of the Commonwealth, and a judge of the Dauphin County Courts of Common Pleas and the Pennsylvania Superior Court. He taught Pennsylvania constitutional law at the Dickinson School of Law for more than 15 years.

At page 340, Judge Woodside says that section 31 is intended to eliminate the use of truly private, appointed agencies to provide some municipal function while at the same time requiring the State to pay for it. *Schofield v. Donato*, 429 Pa. 435, 240 A.2d 541 (1968). The divorce of the power to incur debts from the obligation to provide for their payment was the "principal mischief" that the framers of section 31 were seeking to prevent. *Trantner v. Allegheny County Authority*, 316 Pa. 65, 173 A. 289 (1934).

The theory underlying this prevention of delegation, Judge Woodside continues, was to preserve the separation of powers. As explained in *Wilson v. Philadelphia School District*, 328 Pa. 225, 228, 195 A. 90, 93 (1937), "It is on the preservation of the lines which separate the cardinal branches of the government, that the liberties of the citizen depend . . . One cardinal principle stands out, that any fundamental or basic power necessary to

government cannot be delegated."

Additionally, section 31 is designed to prevent taxing power being given to persons not elected and not responsible to the public. No unconstitutional delegation occurs, however, when the Legislature fixes the maximum rate of tax that may be charged by the appointed board. *Minsinger v. Rau*, 236 Pa. 327, 84 A. 902 (1912); *Moore v. Pittsburgh School District*, 338 Pa. 466, 13 A.2d 29 (1940).

In the *Wilson v. Philadelphia School District* case, *supra*, the court said, again, that "One cardinal principle stands out, that any fundamental or basic power necessary to government cannot be delegated." Under his discussion of the police powers of government, Judge Woodside defines police power as a fundamental or basic power necessary to government. The "police power," he says (page 235) is the power inherent in a sovereign to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society.

Enacting such laws is a legislative power vested in the General Assembly under Article II, section 1, of the Constitution of Pennsylvania. This power is limited only by the restraints contained in the Federal and State Constitutions, including the prohibitions under the Supremacy Clause of the Federal Constitution which provides that state constitutions and laws in conflict with treaties and acts of Congress are unconstitutional.

The scope of the police power is necessarily very broad, transcending all other powers of government. But this exercise is not unlimited. "By a host of authorities, Federal and State alike, it has been held that a law which purports to be an exercise of the police power must not be unreasonable, unduly oppressive, or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained." -- *Commonwealth ex rel. Woodside v. Sun Ray Drug Co.*, 383 Pa. 1, 10-11, 116 A.2d 833 (1955).

We must presume that the legislative body, whether of the State or of a municipality, acts with the purpose of serving the public welfare and that all intendments are in favor of its actions. But the power to thus regulate does not extend to an arbitrary, unnecessary, or unreasonable intermeddling with the private ownership of property, even though it is labeled for the preservation of health, safety and general welfare. The police power must be exercised with scrupulous regard for constitutionally guaranteed private rights. It can be properly exercised only in the true public welfare. If exercised otherwise, the regulation will be stricken down as a perversion of the sovereign power. (Woodside, pages 236-237.)

To meet the test of the courts, "the law must not be (1) unreasonable; (2) unduly oppressive; or (3) patently beyond the necessities of the case; and (4) the means employed must have a real and substantial relation to the objects sought to be attained." (Woodside, pages 237-238.)

Conclusion: A law requiring municipalities to pay for the services of the Pennsylvania State Police which perform services locally over and above its regular duties and those additional duties are performed at the behest of the local municipality, if drafted with care and due regard for the Constitution of Pennsylvania, should meet the test set forth in the preceding paragraph and be, therefore, constitutional.