



# LOCAL GOVERNMENT COMMISSION

## Quarterly Legal Update

Spring 2016

Welcome to the first edition of the Commission’s quarterly Legal Update, intended to highlight notable decisions that may have implications for Pennsylvania municipalities. With a focus on reported opinions from our state courts, these decisions may include not only cases in which local governments are parties, but also those that address broader subjects, like statutory construction or constitutional concerns. The Update also references selected active bills and recently enacted laws that may affect municipalities. Our complete compilation of *Summaries of Acts Signed into Law*, along with updates on Commission legislation and projects, may be found on our website. - Philip Klotz, Executive Director of the Local Government Commission

### Legislative Updates:

*HB 902, PN 1101* amends Act 78 of 1979 to authorize political subdivisions and authorities to enter into contracts for “services,” as defined, when two consecutive advertisements fail to induce bids. The bill was passed by the House and has been referred to the Senate Local Government Committee.

*Act 10 of 2016* amends Act 53 of 1973 to authorize a political subdivision or a municipal authority to invest and reinvest public funds in financial products, as specified, in addition to other products authorized by law. (Previously HB 1296)

*SB 411, PN 1335* proposes numerous substantive changes to the Right-to-Know Law including defining “commercial purpose” and authorizing agencies to charge reasonable fees for processing commercial requests. The bill was passed by the Senate and referred to the House State Government Committee.

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### Civil Rights

*Patterson v. Strippoli*, No. 14-4624, 2016 WL 231532 (3<sup>rd</sup> Cir. Jan. 20, 2016). Plaintiffs in 42 U.S.C §1983 claim adduced sufficient evidence to support “class of one” and racial discrimination equal protection claims against municipal official and municipality for selective enforcement of municipal ordinance where it was alleged that several properties adjacent to plaintiffs were in similar violation of ordinance and municipal official harbored animus against plaintiffs.

*Peters v. City of Wilkes-Barre*, No. 3:15-CV-152, 2016 WL 320748 (M.D. Pa. Jan 27, 2016). Motion to dismiss complaint denied. Occupants and owners of rental properties brought civil rights claim against city for Fourth, Eighth, and Fourteenth Amendment violations through enforcement of “One Strike Ordinance” providing automatic six-month suspension of certificate of occupancy if code officer determined an occupant or owner had actual or implied notice of drug or gun activity.

*Northeastern Pennsylvania Freethought Society v. County of Lackawanna Transit System*, 3:15-CV-833, 2016 WL 320752 (M.D. Pa. Jan. 27, 2016). Motion to dismiss civil rights claim denied where public forum designation of transit authority advertising locations could not be determined without further analysis, and secular organization allegations that authority permitted religious ads in violation of its policy prior to rejecting a secular ad presented a plausible claim of viewpoint-based discrimination.

*Firearm Owners Against Crime v. City of Harrisburg*, 1:15-CV-0322, 2016 WL 1162283 (M.D. Pa. Mar. 24, 2016). Three citizens and a statewide nonpartisan organization that “actively works to defend, preserve and protect the constitutional and statutory rights of lawful firearm owners” held not to have standing to challenge five City ordinances:

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(1) a prohibition on unsupervised minors to possess firearms outside of the home; (2) a requirement that owners report the loss or theft of firearms; (3) an authorization for the mayor to declare a state of emergency triggering certain prohibitions on firearm and ammunition possession; (4) a prohibition on the possession of certain weapons in parks; and (5) restrictions on discharging firearms within city limits. Even assuming the extension of constitutional rights to the ordinances in question, the threat of imminent prosecution under the ordinances is too speculative to confer standing on plaintiffs.

*Anna Sosina, et al. v. Robert D. Schadegg Code Enforcer, Lower Moreland Tp.*, 15-CV-2637, 2016 WL 1241863 (E.D. Pa. Mar. 30, 2016). Plaintiffs’

Fourth Amendment rights not violated by citation for failure to permit warrantless search of construction site pursuant to the Uniform Construction Code under the “highly regulated industry” exception to Fourth Amendment warrant requirements.

## Tax Sales

*In re Consolidated Reports and Return by Tax Claims Bureau of Northumberland County of Properties*, No. 752 C.D. 2014, 2016 WL 243839 (Pa. Cmwlth. Jan 21, 2016). Trial court did not abuse discretion by granting waiver of personal service under Real Estate Tax Sale Law where service was attempted three times during different hours and facts

were considered in light of “the fundamental purposes of the law.” Furthermore, *ex parte* nature of waiver petition process held not to violate strict notice requirements of law, and granting of waiver rendered improper designation of server irrelevant. Actual notice of impending sale obviated need to strictly comply with notice requirements of statute. *See* 72 P.S. § 5860.601(a)(3).

**“Under the Ordinance, a rental unit is immediately stripped of its certificate of occupancy and occupancy license ... if a code enforcement officer determines that ‘[a]n occupant or owner has implied or actual knowledge of drug [or gun-related criminal] activity . . . .’ Accepting the facts alleged by the plaintiffs as true, the Ordinance . . . fails to provide any pre-deprivation due process.”**

- *Peters v. City of Wilkes-Barre*

*Famagelitto v. County of Erie Tax Claim Bureau*, No. 1271 C.D. 2014, 2016 WL 243340 (Pa. Cmwlth. Jan. 21, 2016). Reasonable efforts to notify owners of sale as required by the Real Estate Tax Sale Law found where, after receiving unclaimed certified mail, the bureau searched for alternative addresses in internal records, the telephone directory, and assessment, tax collector and prothonotary records, and sent subsequent notices to both the original and an alternative address found during search. In an issue of first impression, coordinate jurisdiction rule does not preclude review of sufficiency of efforts to locate owners for personal service where earlier bulk waiver of personal

service was obtained from court. *See* 72 P.S. § 5860.601(a)(3).

*City of Philadelphia v. Philadelphia Scrapyard Properties, LLC*, No. 1386 C.D. 2015, 2016 WL 718435 (Pa. Cmwh. Feb. 24, 2016). Statutory prohibition on redemption of vacant property under the Municipal Claim and Tax Lien Law inapplicable to situation where one out of six tenants changed, because “fundamental part” of basic family unit occupied premises continuously. Furthermore, only redemption procedure, rather than payment, need begin within 9-month statutory period and purchaser not entitled to statutory interest for period during which redemption funds are refused. *See* 53 P.S. 7293.

## Land Use

*Honey Brook Estates, LLC v. Board of Supervisors of Honey Brook Tp.*, No. 1258 C.D. 2014, 2016 WL 147150 (Pa. Cmwlth. Jan. 13, 2016). Bad faith in subdivision plan review found where municipality implementing zoning change to developer’s property provided no reasonable opportunity to respond to objections. Developer was informed that amended plan had defects and would not be submitted for review; then plan was, nevertheless, submitted for review and rejected by governing body.

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## *Hartman v. Zoning Hrg. Bd. of Cumru Tp.*, No. 650 C.D. 2015, 2016 WL 555676 (Pa. Cmwlth. Feb. 12, 2016).

Volunteers at residence for terminally-ill patients considered analogous to “domestic employees,” as the term is commonly understood, for purposes of inclusion in ordinance definition of family. Submission of building permits under name of predecessor in title not prejudicial to appellants, and failure to object to statements of solicitor at ZHB hearing constituted waiver of issue of bias on appeal.

*Embreeville Redevelopment, L.P. v. Board of Supervisors of West Bradford Tp.*, No. 1381 C.D. 2015, 2016 WL 805554 (Pa. Cmwlth. Mar. 2, 2016). Township’s proposed zoning amendment adding medium and high-density residential housing uses to an industrial district constituted a zoning map change rather than a curative text amendment and, consequently, required posting and mailed notices prior to enactment. The proposed amendment added a new and arguably incompatible use to the district changing its entire nature, and thus represented a new comprehensive zoning scheme warranting map change procedures.

## **Municipal Claims**

*Augustin v. City of Philadelphia*, 14-CV-4238, 2016 WL 1073223 (E.D. Pa. Mar. 18, 2016). Due process entitles landlord to notice and a meaningful opportunity to address the gas service delinquencies of tenants prior to the placement of liens on property.

## **Right-To-Know**

*Miller v. County of Centre*, Nos. 856 C.D. 2015, 857 C.D. 2015, 2016 WL 981393 (Pa. Cmwlth. Mar. 15, 2016). Orders prohibiting county’s release of district attorney records reversed. District attorney’s office was not a “judicial office” authorized to restrict disclosure to “financial records.”

## **Tort Claims**

*Kazimer v. Methacton Sch. Dist.*, No. 760 C.D. 2015, 2016 WL 300072 (Pa. Cmwlth. Jan. 22, 2016) (UNREPORTED - See 210 Pa. Code §69.414). Summary judgment in favor of defendant school district in Political Subdivision Tort Claims Act action brought for injuries sustained during fall down auditorium stage stairs sustained. Open and obvious condition of stairs precluded common law liability and lack of rail or adhesive material not considered defects of real property for purposes of statutory definitions. See 42 Pa.C.S. § 8542(b)(3).

## **Eminent Domain**

*In re Condemnation by the Commonwealth of Right-of-Way for S.R. 0095*, 131 A.3d 625 (Pa. Cmwlth. 2016). Provision of Eminent Domain Code requiring that declaration of taking be filed within one year of action authorizing condemnation held directory rather than mandatory, and condemnor, “in the face of an objection on the basis of untimeliness,” does not lose the power to condemn subject property but

must, at most, begin process anew. See 26 Pa. C.S. §302(e).

## **Pennsylvania Constitution**

*West Philadelphia Achievement Charter Elementary Sch. v. School Dist. Of Philadelphia*, No. 31 EM 2014, 2016 WL 616748 (Pa. Feb. 16, 2016). Provisions of Public School Code (Code) granting School Reform Commission “sweeping powers,” including the power to waive provisions of the Code as applied to school districts of the first class, held to violate the nondelegation clause of the Pennsylvania Constitution. See Pa. Const. Art. 2, § 1; 24 P.S. §§ 6–696, 6–696(i)(3).

## **Legislative Updates:**

*Continued from page 1*

*HB 1325, HB 1394 and HB 1661* amends the Borough Code, the First Class Township Code and the Second Class Township Code, respectively, to authorize the governing body to assess fees for the purpose of funding and regulating storm water management activities and facilities. All three bills have passed the House and have been referred to the Senate Local Government Committee.

*Act 6 of 2016* amends the Local Tax Enabling Act (Act 511 of 1965) to exempt from the local earned income tax wages or compensation paid to individuals on active military service, regardless of whether it is earned for active military service inside or outside the Commonwealth. (Previously HB 561)

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