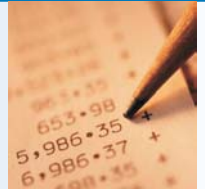




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GOVERNOR'S CENTER FOR
LOCAL GOVERNMENT SERVICES



Township Commissioner's Handbook



Commonwealth of Pennsylvania
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Township Commissioner's Handbook

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Foreword

Twelve of the 91 first class townships existing in Pennsylvania have adopted home rule charters and now operate as home rule municipalities. In addition, Bristol Township in Bucks County operates under an optional plan of government. Much of the material in this handbook no longer applies to these townships, particularly those sections on the office of township commissioner and its powers, duties and responsibilities. However, this publication contains general reference material on local government that can be useful for home rule community officials.

Additional details of municipal operations in such areas as financial management, taxes, land use regulations and purchasing are found in other Department of Community and Economic Development publications.

Numerous training courses the Department and other agencies offer are directed to specific aspects of the township commissioner's duties. Assistance is also available from the consultants with the Governor's Center for Local Government Services, from the state and regional township associations, as well as from various educational institutions.

I. The Commissioner and Township Government

Townships governed by elected boards of commissioners are a relatively uncommon form of municipal government in Pennsylvania. In fact, Pennsylvania's 91 first class townships represent only 3.5 percent of all general purpose municipal governments in the state. According to the estimated 2003 census figures, the state's township commissioners govern a combined population of 1.4 million, or 12.1 percent of the state's total.

Most first class townships are located in urban areas and have dense populations. The 91 townships fall within the following geographical classifications: urban Philadelphia area - 25, urban Pittsburgh area - 33, other urban areas - 22, outside urban areas - 11. The 11 townships located outside urban areas all adjoin small urban centers. Only 21 of the state's 67 counties contain first class townships. First class townships are relatively large units compared to most Pennsylvania municipalities; 64 percent have populations exceeding 10,000 compared to only 9 percent of all municipal units.

First Class Townships by Population Size, 2003 Census Estimates

<u>Population</u>	<u>Number</u>
20,000 and over	26
15,000-19,999	13
10,000-14,999	20
5,000-9,999	9
2,500-4,999	12
1,000-2,499	8
under 1,000	2

The five largest first class townships are Upper Darby (Delaware County), 81,821; Lower Merion (Montgomery County), 59,850; Abington (Montgomery County), 56,103; Bristol (Bucks County), 55,521; and Haverford (Delaware County), 48,498. The five smallest are East Deer (Allegheny County), 1,362; Neville (Allegheny County), 1,232; Aleppo (Allegheny County), 1,039; West Lebanon (Lebanon County), 836; and South Versailles (Allegheny County), 351.

Development of Township Government

Townships are among the oldest political subdivisions of Pennsylvania. William Penn's 1681 Charter authorized him to divide counties into towns and townships. As soon as the first counties were created in 1682, they were subdivided into districts for various governmental purposes. At least two dozen townships that were formed in the late 1600s still survive in southeastern Pennsylvania. The oldest are Chester, Haverford and Lower Chichester in Delaware County, all were formed in 1682. As settlements moved westward, townships were often formed in frontier areas before there was sufficient population to justify a separate county. So, in most areas, the oldest subdivisions are townships, predating even the county government.

Townships were laid out by action of the local justices of the peace sitting as the County Court of Quarter Sessions. They subdivided the county for purposes of road maintenance, administering poor relief, conducting elections and collecting taxes. In 1803, the General Assembly legislated this process in a statute that authorized local courts to create townships within each county. Townships were also created by special act of the General Assembly until this practice was prohibited by the Constitution of 1874.

During the colonial period and the early republic, most township officers were appointed by county officials or the county courts. Officers of townships in the nineteenth century included assessors, three supervisors, a treasurer, a town clerk, three auditors and a constable. The assessing function gradually migrated to the county level, while collection of real estate taxes became fixed at the township level.

The first general township law was enacted in 1834, and the law classifying townships was enacted in 1899. All townships became townships of the second class, except those certified to have a population density of 300 persons or more per square mile. The original law provided for automatic transfer into the first class upon certification of the required population density. Approximately ten townships around Philadelphia and Pittsburgh were certified as first class townships in 1900 and began to operate under the new form in 1901. The 1917 Township Law provided for both first and second class townships. Separate laws for first class townships were enacted in 1931 and for second class townships in 1933.

The First Class Township Law of 1931 ended automatic transfer into the first class when population density exceeds 300 per square mile. Approval of the voters in a referendum has since been required to create a first class township out of a second class township. The maximum number of possible wards was capped at 15 by this law.

In 1937, first class townships received important protection against annexation of territory by adjoining municipalities through the requirement of approval of any annexation by a referendum vote of the entire township. Similar protection was long sought by second class townships, but was not achieved until after the amendments to Pennsylvania's Constitution in 1968. This distinction encouraged the creation of many first class townships. The 1931 law was amended and reenacted as the First Class Township Code in 1949.

With the widespread use of the automobile in the 1920s, population and housing units began dispersing out of the state's urban centers. The trend accelerated after the end of World War II and first class townships' favorable location on the fringe of the growing metropolitan areas brought rapid growth in population. The past 15 years have witnessed a peak in the populations of older, more central townships as the crest of population growth has moved out beyond them. Many townships have become mature, fully developed municipalities.

Role of Municipal Government

The municipality is the focus of governmental legitimacy on the local level. Townships are given power and have acknowledged the right to use that power to circumscribe individual rights for the good of society at large. People living in society need rules to govern their behavior. Government is the vehicle that writes and enforces these necessary rules. Local government performs this function for the community it governs.

Municipal government is acknowledged as legitimate because its officers are chosen in popular elections, and because it is subject to constraints found in written constitutions and laws. Many of these constraints are designed to protect the rights of individuals from undue infringement by the municipality.

Municipal governments provide the only authentic organized voice for a community. The municipal government is the institutionalized representative of the community. It has an important role in planning for the community's future development or renewal, finding solutions to present-day problems and conserving important parts of the community's past in terms of buildings and traditions.

The municipal government speaks for the community to state and federal administrative agencies, as well as in the state legislature and Congress. Municipal government plays an even greater role in economic development and represents community interests in encouraging or seeking employment-generating economic activities.

The municipality provides important community services that are not suited for private enterprise. Townships are heavily involved in the maintenance of roads, a function of growing importance in a society heavily dependent on the automobile. Municipal governments have the ultimate responsibility for public safety, including police, firefighting and emergency management. Townships often provide water, sewer and refuse collection services, although these may also be provided by private firms or municipal authorities.

The municipality is the tool for regulating the quality of life within the community. It can promulgate health and safety requirements to protect citizens and often has a role in enforcing state regulations in this field. The municipality can influence aesthetic factors and amenities that contribute to the quality of life. This can be done by removal of nuisances, control of noxious activities, building regulation, control of development through zoning and subdivision ordinances, animal control and other regulatory activities.

Through their elected representatives, citizens of a community can have a great deal of control over the general appearance and desirability of the community. This is also achieved through sponsorship or encouragement of local cultural or recreational activities, such as libraries, museums, concerts, parks, playgrounds, swimming pools, tennis courts, senior citizen centers and other community activities.

Role of Commissioners

The board of commissioners plays the central role in township government. Section 1502 of the First Class Township Code places general supervision of township affairs in the hands of the board of commissioners. Commissioners combine many of the roles found in separate branches or levels of the state and federal governments. The board serves as the legislative body of the township – setting policy, enacting ordinances and resolutions, adopting budgets and levying taxes. Since there is no separately elected executive, the board may also perform executive functions such as formulating the budget, enforcing ordinances, approving expenditures and hiring employees. Over half of the 78 townships operating under the Code have hired managers, while most others use the township secretary for general administrative purposes. In many townships, commissioners also play a large role in administrative activities and oversee the day-to-day operation of township government.

Because of a commissioner's elected status, an individual in that position is often viewed as a community leader. Commissioners are the proper recipients of complaints, ideas and suggestions concerning township affairs. In many cases, the commissioner is called upon to perform as a problem solver, acting as an agent for township citizens with municipal or even outside agencies. The commissioner has a role in representing the township's communal interests - past, present and future. Although assisted by a planning commission, paid administrator or historical commission, many of the final decisions are made by elected officials.

The extent of any one commissioner's activities in these roles is defined by the individual's own view of civic responsibilities, particular fields of individual interest and personal skills and talents. To a large degree, the commissioner's role is also defined by the local political culture, the generalized local attitudes toward municipal government and commonly held expectations of how officials will operate.

Structure of Township Government

A typical governmental structure for townships is outlined in the following organization chart. It indicates the relationship between elected officials, staff and employees and where appointed boards and commissions fit into the overall structure. Although the organization shown can be called typical, very few townships are actually structured in this manner, and most townships do not have all the positions shown in the chart. Not all first class townships have managers. Committees of the board of commissioners or the township secretary often supervise the operating departments.

Your township structure may not correspond with the organization chart. The Code contains few organizational details, allowing wide flexibility in defining the operating departments of a township. Small townships may have no formal department structure or may have only a department of roads or public works. Larger townships can have separate departments for functions, such as parks and recreation, police, finance, sewer, water or others. The number of departments and their respective functions is based on local needs. This determination is one of the concerns of a commissioner.

Other elected township officers include the three auditors or a controller, the treasurer and in some townships an assessor and assistant assessor. Although elected from a township, the constable is an independent officer and does not form part of the municipal government. Assessors are elected only in the 15 townships located within fourth through eighth class counties.

The elected auditors or controller conduct the annual audit of township finances, except when an independent auditor has been appointed. The majority of first class townships have independent auditors. The controller also exercises pre-audit functions.

The treasurer serves as tax collector, collecting school and township real estate taxes and in some cases county real estate taxes. Treasurers also collect street light assessments. In addition, they are often appointed to collect taxes levied under the authority of the Local Tax Enabling Act. Treasurers are to receive all funds paid to the township and keep accounts of these funds.

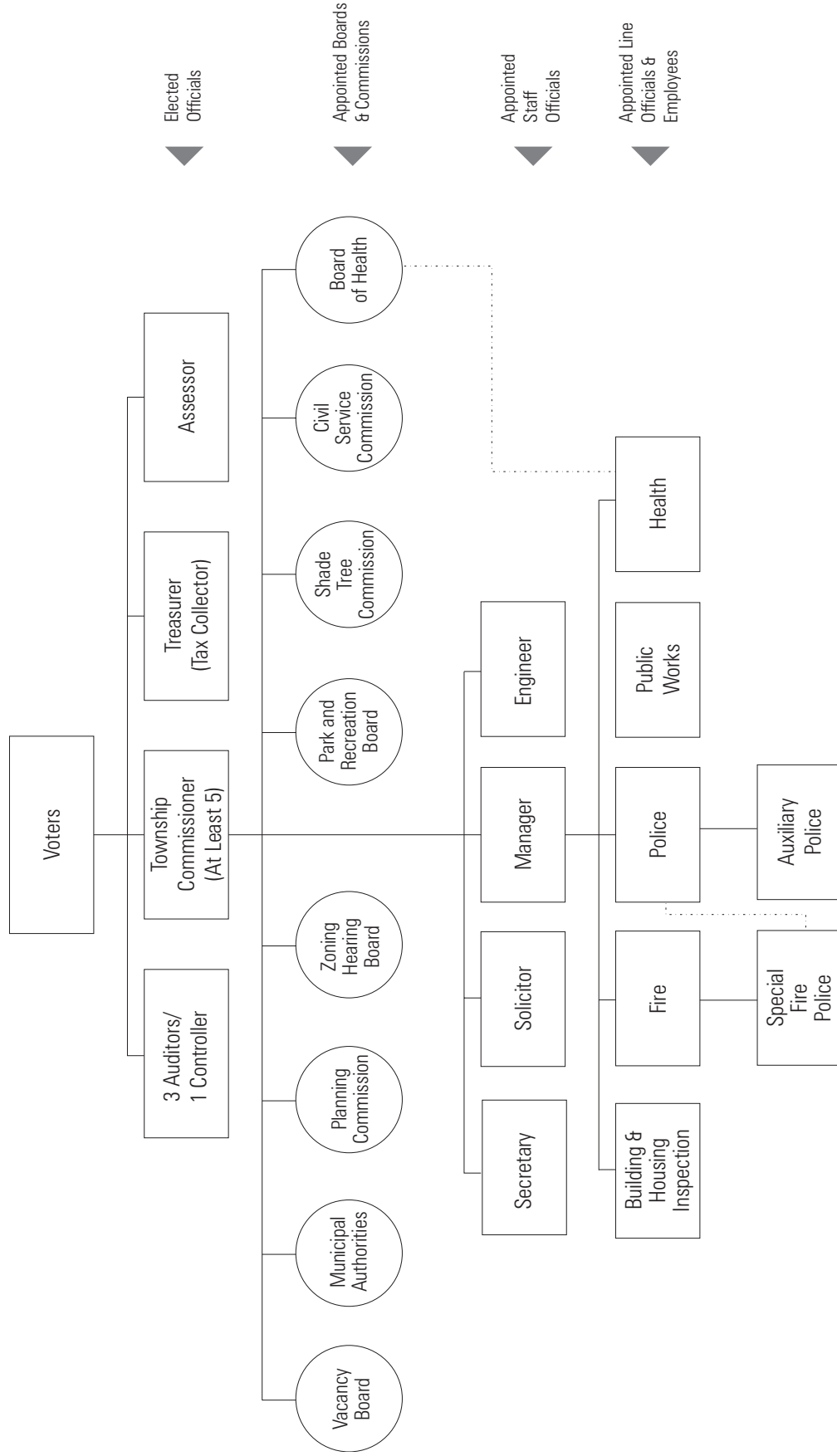
Where elected, township assessors work under the direction of the chief county assessor. They are usually not involved in assessment of real estate, but are primarily used for assessment of occupations and preparation of the per capita tax roll.

The job of the township secretary is the only appointed position that is mandatory under the First Class Township Code. The code was amended in 1999 ending the requirement that the township secretary be a qualified voter of the Township. The township secretary is responsible for the minutes of all meetings and for keeping township records. This individual often serves as the chief administrative officer if the township has no manager. Elected commissioners are prohibited from serving as township secretary.

The duties of the offices of solicitor and engineer are outlined in the Code. The appointment of these officers is not mandatory; however, all townships have solicitors, and most townships have engineers. The solicitor has control of the legal matters of the township, including bonds, real estate transactions, review of ordinances and actions in court. The engineer handles the engineering aspects of work on roads and other public works projects. The engineer also prepares plans, specifications and estimates for work to be performed under contract.

Other offices, such as manager or police chief, may be created with the duties defined by township ordinance. Other state laws authorize appointment of officers, including the sewage enforcement officer, emergency management coordinator, earned income tax officer and zoning officer. Township employees or persons outside township government may hold these duties.

MUNICIPAL STRUCTURE PENNSYLVANIA TOWNSHIPS OF THE FIRST CLASS



▼ Elected Officials

▼ Appointed Boards & Commissions

▼ Appointed Staff Officials

▼ Appointed Line Officials & Employees

Broken line indicates operational control, but not appointment.

II. Office of Township Commissioner

First class townships are governed by a board of township commissioners. The membership of the board may range from 5 to 15 commissioners. The number of commissioners is based on the number of wards within the township. If the township is not divided into wards, the number of commissioners is set at five and they are elected at large.¹ The number of commissioners is also five in townships with fewer than five wards. One commissioner is elected from each ward, and the remaining number is elected at large. One commissioner is elected from each ward in townships with more than five wards.² A township may not be divided into more than 15 wards, and each ward must contain a minimum of 300 registered voters.³

Most first class townships have five-member boards. The distribution for 2003 is shown below.

<u>No. of Members</u>	<u>No. of Townships</u>
5	61
6	3
7	15
8	2
9	6
11	1
14	1
15	1

The two largest boards are Abington (15 members) and Lower Merion (14 members). Half of the boards are elected at large, 10 percent have a combination of at large and district representation and 40 percent are elected entirely by wards.

Term of Office. The term of office for a township commissioner is four years. The Code establishes a pattern of staggered elections so that roughly half of the board is up for election in each municipal election year. In townships divided into wards, commissioners from odd-numbered wards were elected in 1999 and those from even-numbered wards will be elected in 2001. In townships without wards, either two or three members are elected at each municipal election.

When a vacancy occurs in the office of township commissioner, the office may appear on the ballot as a short term.⁴ If the vacancy occurs more than 60 days before a municipal election and if there are at least two years remaining of the original term, the position will go on the ballot for a two-year short term. This provision retains the original staggering of board members and does not allow appointees to hold elective offices for more than two years.

Ward Redistricting

State law provides two separate procedures for redrawing ward lines in first class townships. The traditional procedure, found in the Code, requires petition to the court, appointment of special commissioners to redraw the ward lines and court review of their report.⁵ The amended local government article of the Pennsylvania Constitution, adopted by the voters in 1968, requires governing bodies elected by districts to realign their district lines after each decennial census. This procedure is set forth in the Municipal Reapportionment Act, which requires the board of commissioners to reapportion wards in the year following the official report of any decennial or special federal census.⁶ If the governing body fails to act, any one or more registered voters may petition the court to realign the wards. Any reapportionment plan approved by the board may also be appealed to the court by a petition of at least ten registered voters.

Pennsylvania's courts have ruled that both of these procedures are available for changing the wards of a township.⁷ Redistricting after a census to equalize the population of the wards is primarily a legislative function. Judicial action should only occur when inordinate delays or the governing body fails to satisfy constitutional and statutory standards.⁸

The Municipal Reapportionment Act has not repealed the Code provisions for altering ward boundaries. The Code procedure may be used to abolish ward representation by consolidating all wards into one,⁹ or it can be used to draw ward lines for the first time where the board had previously been elected at large.¹⁰ Wards drawn by either method must be composed of compact and contiguous territory and as nearly equal in population as practicable.¹¹ Districts meeting the population equality standard may nevertheless be constitutionally infirm if boundaries operate to the disadvantage of an identifiable protected class, either to force out, cancel or minimize its voting strength. The lines may reflect existing lines, natural or historic boundaries and topographic or geographic considerations, as long as these factors are not intentionally employed to disadvantage a minority.¹² Redistricting must be primarily based on population figures. The use of other supplementary figures for small areas is not fatal.

Qualifications

The basic qualification to serve as a township commissioner is to be a registered voter and resident of the township.¹³ Commissioners must reside in the township continuously for at least one year before their election. To continue serving as a commissioner, an individual must retain residence within the township. To qualify as a voter, a person must be 18 years of age and a resident of the election district. A person whose name appears on the district voting register, but who is no longer a resident of the township is not a lawfully registered elector.¹⁴ Legal residence includes not only a person's intention, but also a physical presence. The requirement of residence approximates domicile. Intention or voter registration is not enough; an individual's actual residence is better determined by his conduct than by his words. A person cannot declare a domicile inconsistent with the facts of where he or she actually lives.¹⁵

Commissioners elected from a ward must have resided continuously for one year within the ward prior to their election and must continue to reside within the ward during the entire term of office.¹⁶ Commissioners moving to a residence outside the ward they are elected to represent automatically disqualify themselves from holding office.¹⁷ Redistricting can work to deprive ward commissioners of their seats. Where the township has fewer than five wards, a commissioner who is displaced by redistricting may serve the remainder of the term as an at large commissioner.¹⁸

Incompatible Offices. A commissioner is prohibited from also serving as township treasurer,¹⁹ township secretary²⁰ or auditor.²¹ Only one commissioner at a time may serve on the township's civil service commission.²² A limited number of commissioners can serve as members of the township planning commission,²³ but are prohibited from becoming members of the zoning hearing board.²⁴ Additionally, a township commissioner cannot serve as a member of a school board.²⁵

The eligibility of members of municipal governing bodies to serve on authority boards had long been an unsettled issue. However, in 1993, the Pennsylvania Supreme Court determined a township supervisor could legally serve on the board of a municipal authority created by the township.²⁶ This dual office holding did not violate the Second Class Township Code which limits the appointed offices supervisors can fill, because authorities are independent agencies of the Commonwealth and not part of the township government. Any incompatibility of office must be established by the legislature, not by the courts. While this ruling involved a second class township, because of similar wording in the municipal codes, it appears to apply to first class townships as well. However, the articles of incorporation of an authority may prohibit elected officials from serving on authority boards and these provisions are enforceable in the courts.²⁷ Commonwealth Court ruled an elected official violated the State Ethics Act when he voted to appoint himself to an authority board where he received compensation.²⁸

Oath of Office. Before entering office, each commissioner, whether elected or appointed, must take an oath or affirmation of office.²⁹ The oath can be administered by a judge, district magistrate or notary public. The commissioner must swear to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform the duties of the office of commissioner with fidelity. A copy of this oath must be filed with the township secretary within ten days.

Vacancies

The most common reason for vacancies on the board of commissioners is through resignation. Individuals sometimes find that the demands on their time, the pressure of private business activities, personal health or family problems or the responsibilities of office are too great. Vacancies can also occur because of death, moving out of the township or ward or removal from office by the courts.

The Code provides for the remaining members of the board of commissioners to fill a vacancy by resolution.³⁰ Pennsylvania county courts are divided on the issue of whether a resignation, requires acceptance by the governing body or whether it is unconditionally effective.³¹ This is critical because of the timetable established to fill vacancies. The safest course for governing bodies is to take official action to accept any resignation and to fill the vacancy within 30 days of its submission.

Commonwealth Court has recently ruled that a governing body member's resignation is effective when tendered and accepted.³² The resigning officer establishes the effective date of the resignation and from that time on the office is vacant. In this case, the Court voided an action by the board to rescind the resignation acceptance at a subsequent meeting. The Court held that a vacancy existed on the board and could only be filled by action of the board members to appoint a successor until the next municipal election.

The appointment of a new member must be made within 30 days from the date of the vacancy. If the board of commissioners fails to fill the vacancy within the prescribed limit, then the vacancy board fills the vacancy within 15 additional days by appointing a qualified person. The vacancy board consists of the board of commissioners and one registered voter of the township who is appointed by the board and acts as the chairperson. If the vacancy board fails to fill the vacancy within the prescribed time, the chairperson then petitions the Court of Common Pleas to fill the vacancy. In the case of a vacancy in the chairperson, the remaining members of the vacancy board petition the Court to fill the vacancy. Where more than a majority of the offices of commissioner are vacant at any one time, the vacancies are filled by the Court upon petition of at least 15 registered voters of the township.

In all cases, the successor is appointed to serve until the first Monday in January following the first municipal election occurring more than 60 days after the vacancy occurs, if the term continues that long. At that municipal election, a successor is elected to fill any unexpired balance of the term. All persons appointed to fill vacancies must have all the qualifications required of elected officers.

Compensation

Township commissioners may receive a salary. The amount of the salary must be established by an ordinance enacted by the board. The salary cannot exceed the maximums set for the following population groupings, as determined by the latest official census.³³ However, a township is not required to reduce the salaries of commissioners should the population of the township decrease.

<u>Township Population</u>	<u>Maximum Compensation</u>
Under 4,999	\$1,875
5,000-9,999	\$2,500
10,000-14,999	\$3,250
15,000-24,999	\$4,125
25,000-34,999	\$4,375
35,000 and over	\$5,000

Any increase in salary or emoluments only becomes effective for commissioners elected or appointed after the effective date of the ordinance.³⁴ The salary of a commissioner is fixed as of the date of election or appointment. The salaries are payable monthly or quarterly.

Fringe Benefits. Township commissioners can be included in the township’s group life, health and hospitalization insurance policies for employees.³⁵ Township commissioners are not entitled to receive pensions.³⁶ All township commissioners are authorized to be covered by the township’s liability insurance policy. Changes in fringe benefits can only become effective for commissioners elected or appointed after the effective date of the ordinance.

Expenses. When travel on official business is authorized by the board, commissioners can receive a mileage fee for use of their personal vehicle. The amount for mileage is to be set by the board of commissioners for all township personnel.³⁷ When attending meetings, conferences, institutes and schools authorized by the board, a commissioner is entitled to payment of any registration fee, mileage or actual transportation expense, plus all other actual expenses the board agreed to pay.³⁸

Commissioners are authorized to attend meetings of county or regional conventions of township associations. Township commissioners attending such events are entitled to payment of the registration fee, mileage or actual transportation expense and all other expenses the board agreed to pay.³⁹ Likewise, township commissioners who are authorized by the board to attend the annual convention of the State Association of Township Commissioners are entitled to payment of the registration fee, mileage or actual transportation expense and all other actual expenses the board agreed to pay. Commissioners attending the convention must submit an itemized account of expenses to the board. The time spent attending the annual convention cannot exceed four days, including travel time. The board of commissioners may authorize township employees to be compensated at their regular rate of pay while attending the annual convention.⁴⁰

Conflicts of Interest

Township commissioners must carefully avoid the possibility of conflict between their personal and private interests and their role as public officers. The State Ethics Act states the people have a right to be assured the financial interests of public officers do not conflict with the public trust.⁴¹

In any issue brought before the board of commissioners where an individual member has a conflict of interest, or there is an appearance of a conflict of interest, that commissioner should refrain from voting on the issue. Pennsylvania courts have long upheld as a fundamental public policy principle the rule that a member of a governmental body cannot vote on any matter where that member has a direct personal interest.⁴²

Specific legal prohibitions governing personal interest in contracts and purchases appear both in the State Ethics Act and in the First Class Township Code. These provisions must be read together and the most restrictive provision followed.

Under the Ethics Act, revised in 1989, no public official, such as a township commissioner, can enter into a contract valued at \$500 or more with the governmental body with which the official is associated, unless the

contract is awarded through a public process, including prior public notice and subsequent public disclosure. Moreover, this prohibition extends to any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official is associated, unless the contract is awarded through a public process. In such case, the public official cannot have any supervisory responsibility for administration of the contract.⁴³ The Code prohibits commissioners from having any personal interest in contracts over \$300.⁴⁴ In cases where a contract is made with a firm employing a commissioner in a non-management position, the commissioner must inform the board of such status and refrain from voting on the contract. The Code includes specific penalties for violation of the personal interest prohibition. However, a court determined this prohibition did not apply where the connection between an elected official and a bidder is remote, and there is no evidence of collusion or ulterior motive in awarding a contract.⁴⁵ Any commissioner facing the possibility of a conflict of interest under the State Ethics Act may request an advisory opinion from the State Ethics Commission. Alleged violations can be reported to the Commission for further investigation.

Any contract, purchase or appointment a township wishes to make where a commissioner or any other township official has a personal interest should be closely scrutinized as to its legality. In all cases, the appearance of honesty and impartiality is as important as fulfilling legal requirements.

Financial Disclosure Statements. The State Ethics Act requires local elected and appointed officials to file financial interest statements no later than May 1 of each year in office and one year after leaving office. The statements are open to public inspection.

For more information regarding the State Ethics Act, contact the State Ethics Commission at:

Pennsylvania State Ethics Commission
Room 309 Finance Building
P.O. Box 11470
Harrisburg, PA 17108-1470
Telephone: 717-783-1610
Toll Free: 800-932-0936
Fax: 717-787-0806
www.ethics.state.pa.us

Surcharges

Township officers whose actions have exceeded legal authorizations, or who failed to take actions required by law, are subject to a financial penalty if the action or failure to act resulted in a financial loss to the township.⁴⁶ When the township auditors or controller review the accounts for the year, they are required to determine if financial loss was caused by the illegal action or inaction of any officer. If they find such a case, the audit contains a balance called a surcharge entered against the official responsible. The Code contains procedures for the filing and appeal of surcharges. The action of imposing surcharges is civil in nature, rather than quasi-criminal. Because the function of the surcharge is remedial and not punitive, it reimburses the government for losses resulting from some misconduct of its officials.⁴⁷

There is a specific provision for surcharge in cases of evasion of advertising requirements in making purchases. Any commissioner who contracts for purchases on a piecemeal basis to avoid advertising for a purchase of more than \$10,000, may be subject to a surcharge of ten percent of the full amount of the contract or purchase.⁴⁸

Limiting surcharges to the amount of actual loss does not apply to cases of fraud or official collusion. For such activities, commissioners are also subject to the criminal laws of the Commonwealth. Officials convicted of crimes relating to the conduct of their public office are subject to removal from office by the courts.

Removal from Office

Section 604 of the First Class Township Code states that failure to perform duties mandated by the First Class Township Code or other applicable state laws are grounds for removal from office. However, the Pennsylvania Supreme Court effectively overturned Section 604 when it reaffirmed its 1995 decision in *South Newton Township Electors v. South Newton Township Supervisor, Ronald Bouch* (2002).⁴⁹

In *South Newton*, the Court upheld a lower court decision that found Section 503 of the Second Class Township Code (pertaining to removal from office) to be in violation of Article VI, §7 of the Pennsylvania Constitution. The decision affects similar language found in Section 604 of the First Class Township Code.

Official Liability

The Judicial Code defines a strictly limited set of conditions where the township can be held liable for damages because of injury to a person or property.⁵⁰ Members of the board of commissioners are exempt from official liability if the acts or omissions in question are held to be within the policymaking discretion granted to them by law. If an action is brought against a commissioner for an act or omission claimed to be within the scope of official duties, the township, when requested by the commissioner, must defend the action. The township is authorized to purchase liability insurance for itself and its officers and employees or to initiate a risk management program. However, the Pennsylvania Supreme Court has ruled that when a surcharge arises from the willful or fraudulent misconduct of an official, the municipality may insure only its loss and may not purchase coverage for the official. Surcharges arising out of an official's willful or fraudulent misconduct are liabilities which arise outside the scope of employment.⁵¹

References

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III. Legislative Powers

General Powers

Election to the governing body of any Pennsylvania municipality conveys a great deal of power and responsibility. This power is granted by various laws and codes vesting certain corporate and specific powers in the board of commissioners. Corporate powers legalize the action of the municipality and provide elected officials authority to act on behalf of the municipality.

General municipal corporate powers include the right to sue and be sued, to complain and defend in the courts of the Commonwealth, the right to make and use a common seal and the right to purchase, acquire, hold, lease and sell real and personal property in the best interests of the municipality.¹ The First Class Township Code invests the corporate power of the municipality in the board of commissioners.²

The Code further delineates other powers enabling the board to function in the best interest of the township. Specific powers provide authority to the board to enact legislation covering governmental functions such as health, fire and police protection and taxation. Specific powers granted to the township are intended to provide the commissioners with the capability needed to legislate for the benefit of the municipality and its citizens.

The Code also includes an especially important power - the authorization of the governing body to make and adopt all ordinances, bylaws, rules and regulations deemed necessary for the proper management and control of the township, in order to maintain good government and protect the safety and welfare of its citizens.³ A municipality is forbidden, however, to enact any legislation in conflict with the Constitution and the laws of the Commonwealth. This general grant of power authorizes any legal action on the part of the board of commissioners to maintain peace, good government and the welfare of the township, as well as to protect the health, safety, morals and general welfare of its inhabitants. Courts have placed limitations on these general police powers. An exercise of police power must not be unreasonable, unduly oppressive or patently beyond the necessities of the case. The means it employs must have a real and substantial relation to the objects sought to be obtained. It must not invade the fundamental liberties of the citizens. Even legitimate legislative goals cannot be pursued by means which stifle fundamental personal liberty when the goals can be otherwise more reasonably achieved.⁴

The Legislative Role

Elected township commissioners serve primarily in a legislative role. They may also act in an administrative, executive or supervisory role to a lesser extent. The legislative role is of primary importance because the actions taken in deciding the laws governing the township will affect not only the people within the township, but also those outside its borders. Whether commissioners become involved in initiating new laws or in passing judgment on the legal proposals of other officials, they will undoubtedly find legislation an interesting and important aspect of their position.

Because the actions of a governing body have an impact and potential consequences on a municipality, the methods for taking official action are specified in the First Class Township Code and other state laws. Although official binding actions may be taken on the basis of an ordinance, a resolution or a motion, the Code requires all legislative acts to be taken by ordinance or resolution.⁵

An ordinance is generally defined as a local law of a municipal corporation that is of a general or permanent nature. In some cases, the Code specifies when an ordinance should be used. If no specific direction is given in the Code, an ordinance should be used if the matter has general application or is of a permanent nature.⁶ A

resolution, on the other hand, is considered less formal than an ordinance and is used when the matter under discussion is either specific or of a temporary nature, such as awarding contracts.⁷

A motion is a formal method for taking action on any measure being considered by the governing body, such as an ordinance or resolution. In addition, it is used to finalize the decision on other actions before the board. The adoption of a motion by the required majority of the quorum expresses the will of the group.

Because of the vagueness of the term legislative action, the township solicitor should be consulted when the governing body is uncertain whether to use an ordinance or resolution.

The commissioners' role as a legislator is not confined to enacting township laws. Elected officials represent the township and are expected to be concerned with and at times, attempt to influence state legislation affecting their municipality. The General Assembly considers legislation affecting all townships, all local governments in Pennsylvania and each individual municipality or region.

As representatives of the township, commissioners are in a position to exert some influence on the decisions of state legislators. The relationship between commissioners and legislators is more effective if the board takes an official position by adopting a resolution prior to contacting their legislators. The methods of communication with a legislator may vary from the telephone, to letters, to personal visits. If the contact is verbal, it should be followed with a letter. Make sure the facts are accurate, precise and brief. Commissioners should not hesitate to contact legislators from districts other than their own, particularly the committee chairperson or other members of either chamber sponsoring a bill. This activity has been approved by the courts as part of a local official's role. However, expenditures of public funds for lobbying should not become unreasonable.⁸

Quasi-Judicial Role

In addition to the power to deliberate, formulate and enact local legislation and regulations, state law gives boards of commissioners quasi-judicial powers as a hearing board to hear argument, interpret local ordinances and decide certain issues. These include hearings on such matters as local personnel actions and various types of applications under the Planning Code. The formulation of legislative policy involves full and free public discussion of issues, often with a commissioner vigorously acting as advocate for a particular policy approach or possibly spearheading opposition. Such activity is often a necessary part of the legislative process.

However, when the board of commissioners is acting in a quasi-judicial role, a different pattern of behavior is required. In a case appealing denial of conditional use and site plan applications, Commonwealth Court found the applicant's right to due process was denied by the participation in the vote of one of the council members who had actively opposed the proposal before it was brought before the governing body.⁹ His actions included speaking in opposition to the proposal at public hearings, writing to constituents on official stationery, expressing opposition and encouraging the public to attend meetings to pressure council to defeat the proposal, and alleged 'vote trading' with another council member. The Court held that because of the council member's clear bias and actions against the proposal, allowing him to vote was a denial of the applicant's right to a fair hearing. This case underscores the need for commissioners to avoid the appearance of bias in cases where they are acting as a tribunal and performing a role quite different from the role of formulating public policy.

Meetings

The First Class Township Code requires the board of commissioners to meet at least once a month at a time and place designated by the board.¹⁰ Only the date of the organization meeting of the board is set by law as the first Monday in January of each even-numbered year. When the first Monday is a legal holiday, the organization meeting is held the following day. The board's first official business at this meeting is to elect one of its members as president and one as vice president. These officers serve at the pleasure of the board and can be replaced at any time.¹¹

The Code sets minimum requirements for a quorum to do business at a meeting. A quorum is a majority of the members of the board. If a quorum is present, then a majority of the votes cast on any particular question will carry the issue.¹² This is the case even if this number does not constitute a majority of the board. It is immaterial if all members present did not vote. Nonvoting members cannot prevent action by the board by their silence. Of course, a commissioner with a conflict of interest on any matter should declare it and refrain from speaking or voting on that particular issue.

Although commissioners are prohibited from voting on any issue where there is a personal conflict of interest, they sometimes abstain from voting on issues where they have no personal interest. Local government is based on the concept of representative democracy. Governing body members are elected to represent their constituents in making decisions for the community. Refusing to vote because a matter is contentious or may cause personal resentments is not acceptable. Commissioners refusing to vote are violating their sworn duty to represent the voters in helping to decide matters before the governing body.

Conduct of Meetings

Inevitably at one time or another commissioners will be called upon to conduct a meeting, even though they may not be the president of the board. In addition, most commissioners will probably find themselves on special subcommittees, or members of a regional group of municipalities. They may very well be designated chairperson and be responsible for the proper conduct of meetings.

The First Class Township Code does not set forth rules of conduct or procedure for municipal meetings. Each township is free to establish its own order of business and rules for conduct and procedure.¹³ The township probably already has a procedure for its meetings which has been established either by ordinance, resolution or perhaps by tradition. Rules of procedure are always within the control of the majority and may be changed at any time by majority vote.

A wise chairperson ensures an agenda is prepared for each meeting. This is necessary for several reasons: (1) the agenda provides a guide for the chairperson to keep the meeting on the track; without an agenda or an ordered sequence of events, it is too easy for extraneous issues to disrupt the meeting; (2) an agenda assures all relevant points concerning the business at hand will be discussed; and (3) an agenda lets all the participants in the meeting know exactly when they are expected to make their contribution.

The agenda also serves another useful purpose by enabling the township to inform the news media in advance of relevant topics to be discussed at the meeting. The news media in turn helps encourage citizen participation in the township's decision making process.

Following is an example of a township meeting agenda which, with minor variations, follows the general pattern used by many municipalities in Pennsylvania.

Meeting Agenda

1. *Call to Order* - The president of the board calls the meeting to order. A roll call is conducted to determine if a quorum is present.
2. *Minutes of the Previous Meeting* - Minutes from the previous meeting or meetings are presented for approval. To expedite the procedure, minutes of the previous meeting should be typed and mailed to commissioners for their review prior to the meeting. Minutes are reviewed for possible corrections, deletions or additions. Changes to the minutes or approval of the minutes can be made without a motion if there are no objections.
3. *Treasurer's Report* - The treasurer gives a report of expenditures and revenues since the prior board meeting. A typed report mailed to officials prior to the meeting expedites action on financial matters.

4. *Correspondence* - Letters or verbal communications received by the township since the last meeting should be noted and acted upon.
5. *Persons to be Heard* - Any individual or representative of any organization that requests to appear before the board to present any matter they feel is of municipal concern. Some townships require persons wishing to participate in the meeting to be placed on the agenda prior to the meeting. Most townships set a reasonable time limit on citizen presentation. It is a good policy to have the presentation early in the meeting so persons requesting to be heard are not inconvenienced by a lengthy meeting.
6. *Township Reports* - Standing committees, special committees, the township manager, administrative officers and consultants are usually required to give reports on current projects in which they are involved. Townships not having managers usually require monthly or special reports from department heads.
7. *Unfinished Business* - Items of township concern not completely resolved are discussed in the unfinished business category until the board takes some conclusive action.
8. *New Business* - Once all topics of unfinished business included on the agenda are covered, the meeting becomes open to new business. It may include such items as bid openings, consideration of new ordinances or discussion of new public works programs. During this portion of the meeting, commissioners may discuss any appropriate subject or make announcements of importance to other officials or those in attendance.
9. *Public Participation* - This allows residents of the township in attendance to be recognized even though they had not previously been placed on the agenda by the manager or secretary. A time limit is usually placed on an individual's presentation and any resulting discussion.
10. *Adjournment* - A meeting may be adjourned once business is completed.

Parliamentary Procedure

Rules of parliamentary procedure expedite business. The chairperson of the meeting is the one person primarily responsible for seeing that rules and procedures are followed. However, too intricate a system of parliamentary procedure has often caused undue delay of business and frustration among elected officials. Rules and procedures should be followed to the extent necessary to transact business in an adequate, expedient manner.

The most commonly used standard code on parliamentary procedure is *Robert's Rules of Order* by Henry M. Robert. *Jefferson's Manual* and *Cushing's Manual* also contain legislative procedures.

Legislative action is taken by a governing body through a motion and vote. Basically, four types of motions can be made: main motions, subsidiary motions, privileged motions and incidental motions. One of the most common misunderstandings concerns the rule that only one motion can be pending at one time. There can be many motions pending at one time; however, there can be only one main motion. Other motions may be applied to the main motion.

A main motion is simply what the name implies, a motion to accomplish some concrete or specific item of business on the agenda. A subsidiary motion is also what it implies, something supplemental, auxiliary or secondary to the main motion. If such a motion is made, then it must be dealt with before the main motion can be voted on. The most commonly used subsidiary motions are as follows:

1. To postpone indefinitely.
2. To amend the main motion.
3. To amend the amendment.

4. Substitute for the whole.
5. Refer to the committee.
6. Postpone debate until a specified time.
7. Limit or extend debate.
8. The previous question.
9. Lay on the table.

The incidental motion is a minor or subordinate factor to the main motion. If brought up, it must be dealt with before the main motion in question. An incidental motion arises out of the pending question of the main motion. The incidental motions apply specifically to the matter or question immediately pending before the meeting:

1. Leave to withdraw motion.
2. Parliamentary and other inquiries.
3. Division of question.
4. Division of vote.
5. Objection to consideration of question.
6. Suspension of rule.
7. Point of order.
8. Appeal.

Privileged motions are also what they imply, a motion of special right, power or immunity. A privileged motion does not relate directly to the pending question, but rather is more of an administrative function for orderly progress. Following are the most commonly used privileged motions:

1. Call for the order of the day.
2. Question of privilege.
3. Motion of recess.
4. Motion to adjourn.
5. Motion fixing time to which the meeting shall adjourn.

Sunshine Law

The Sunshine Law requires all public agencies to take all official actions and conduct all deliberations leading up to official actions at public meetings.¹⁴ The Law covers all actions by the board and its committees and by all boards and commissions of the township. Official actions include making recommendations, establishing policy, decisions on municipal business and votes taken on any motion, resolution, ordinance, rule, regulation, proposal, report or order.

Township boards of commissioners are required to provide an opportunity for public comments at each advertised regular or special meeting. The right of citizens to make comments is limited to matters of concern, official action or deliberation which are or may be before the governing body. A 1998 amendment to the Sunshine Law requires that public comment occur prior to the board taking official action on an issue. The amendment also gives the board the option of accepting all public comments at the beginning of a meeting.¹⁵ A board may limit the right to speak during this period to residents and taxpayers of the township.

Notice must be given of all public meetings. Notice of regularly scheduled meetings may be given once a year by advertising in a newspaper of general circulation at least three days before the first meeting. Notice must also be posted at the township's principal office. For rescheduled or special meetings, notice must be posted in addition to being published in a newspaper of general circulation at least 24 hours in advance.

Executive sessions, or meetings which exclude the public, may be held only for a limited number of purposes. These purposes include personnel matters relating to a specific individual, strategy sessions and negotiations for collective bargaining agreements, purchase or lease of real estate, consultation with the solicitor in connection with ongoing or pending litigation, or any municipal business which if conducted in public, would violate a legal privilege or protected confidentiality. Since the Act contains the legislative declaration of public policy as ensuring the right of citizens to attend meetings of public bodies, any use of the executive session should be limited to situations clearly falling within the list of enumerated purposes.

Executive sessions may be held during a public meeting or announced for some other time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. Any official action taken on the basis of discussions held at an executive session must be taken at an open meeting.

Emergency meetings do not require public notice, but are open to the public. Emergency meetings are defined as those called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

Township commissioners are permitted to attend conferences, training programs or seminars to gather information on their responsibilities. These sessions are not required to be open to the public. However, township business may not be discussed at such gatherings.

Minutes and Records

The board of commissioners must keep minutes of its proceedings and official actions and other record books the board finds necessary in the performance of its duties.¹⁶ All minutes, records and books are open to public inspection by any persons at any reasonable time. Elected officials must deliver all records, books and minutes to their successors.

All township records required to be recorded or transcribed are valid if typewritten, printed, photostated or microfilmed. The minutes of the proceedings of the board may be recorded in a bound book or mechanical post binder book. Any records, attachments or transcriptions added to a record book must bear the official township seal impressed upon each page.¹⁷

It is very important that all actions of the board be carefully recorded, especially those actions involving the expenditure of funds. It is also important to record votes in both legislative and financial actions. A commissioner disagreeing with a majority action of the board should make certain his or her "no" vote is recorded. A commissioner recorded as voting against an action cannot be held responsible for the action if it later is declared illegal. Any errors in roll call votes should be immediately corrected at that instant. Commissioners cannot change their votes after the meeting is adjourned and the vote is recorded.¹⁸

Intergovernmental Cooperation

Throughout the United States and Pennsylvania, elected local government officials are being confronted with problems that lend themselves to regional solution. Citizens are requesting additional services in such diverse areas as new recreation facilities, increased police protection and library services. At the same time, these citizens are demanding increased services not be matched by increased taxes.

State governments are also making demands by insisting local elected officials solve problems of solid waste disposal and sewage, air and water pollution. These actions are frequently being demanded without regard to the community's ability to pay for the solutions.

Furthermore, because of modern transportation systems, we now have citizens living in one political jurisdiction, working in another and enjoying their recreation in yet another. These people expect to find (and in most cases are willing to support) adequate services and facilities wherever they are. They are not really interested in jurisdictional boundary lines. It has become very difficult to draw a meaningful line between urban and rural municipalities, and between cities, boroughs and surrounding townships, especially when considering police protection, refuse collection and disposal, sewage facilities, economic development, housing, flood control and water supply.

Since problems frequently extend beyond municipal boundaries, sometimes it is suggested that merging municipalities may be an answer. A procedure enabling municipalities to merge or consolidate is found in the Pennsylvania Constitution and in legislation enacted in 1994.¹⁹ Is it accomplished through voter initiative and referendum. This option has not proven to be very popular with the voters. Between 1970 and 2005, only 47 proposals for consolidation or merger of municipalities have been placed on the ballot, and only 11 of them have received the approval of the voters.

Because structural consolidation has been acceptable in limited circumstances, municipalities have found other ways to address regional issues. One approach that has emerged enables elected officials to solve regional problems while still maintaining, and, in fact, strengthening individual local government sovereignty: It is the council of governments (COG) concept. Whether officially called a council of governments or some other title, the idea is based on joint discussion and action by elected officials of each municipality in an area as an efficient way to solve regional problems. Local governments engaged in regional programs through a council of governments concept have found a way to provide realistic solutions to problems too large and too costly for any one municipality to solve completely on its own.

Description of a COG. A council of governments is a voluntary association of local government units joined together under a written compact to improve cooperation, coordination and planning. The COG provides an entity for undertaking cooperative municipal activities authorized by the state constitution and acts of the General Assembly, such as the Intergovernmental Cooperation Act of 1972. By mutual agreement, the members seek solutions to mutual problems. Members of a COG realize the future of each of the local governments depends not only on the action of that government itself, but also on the relationships and interdependent actions of each of the municipalities in the region.

A COG is an informal council; it is not a government entity, but merely a forum of existing governments from each participating community. COGs do not have the power to legislate or to levy taxes. They are voluntary. No government is required to join and members can withdraw at will. They are flexible and their composition may be tailored to fit the needs of the specific area. They are multipurpose in scope, engaging in a wide variety of activities, such as joint purchasing, criminal investigation and regional recreation. After the initial, critical stage of their creation, they are relatively easy to maintain and operate. Most COGs act as a forum to identify, discuss, study and reach policy and priority agreements on regional problems and opportunities. They endeavor to:

1. Serve as a place for the collection and exchange of information of regional interest.
2. Provide the machinery to ensure communication and coordination among various local government units is maintained.
3. Provide a method for individual municipalities within the region to project a unified voice to state and federal governments, thereby strengthening local government.
4. Provide an opportunity to minimize conflicts and misunderstandings between individual municipalities.

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18. *Penn Wynne*, supra, at 531.
19. Pennsylvania Constitution, Article IX, Sections 8 and 14; 53 Pa.C.S. 731.

IV. Administrative and Appointive Powers

In addition to the task as a legislator in the formation of policy and the enactment of laws, commissioners are also responsible directly or indirectly for the operation of all functions of the township government. In that capacity, a commissioner acts as an executive and an administrator concerned with law enforcement, prepares an annual budget, suggests systems of taxation, prepares an annual municipal report, prepares grant applications, appoints members of boards and commissions and contracts for municipal purchases.

Local government becomes more complex every day. Residents demand more services and federal and state governments place more responsibility at the local level. The administration of local government has reached the point where it is extremely difficult for a governing body to handle all of the day-to-day administrative functions without help. Most townships delegate extensive administrative powers to the appointed officials. Large townships generally appoint a manager for this purpose, while many smaller townships utilize the secretary to perform administrative tasks.

Under the broad scope of administration, commissioners are involved in many duties not too technical in nature, but demanding of their time. Some examples are:

1. Informal meetings with residents to obtain their reactions to township programs and policies.
2. Informal meetings with the manager or administrators and township elected officials to discuss specific problems.
3. Reading the technical reports of the administrator, engineers, planners and other professionals employed by the township.
4. Delivering speeches before civic and interest groups.
5. Attending county and state association conferences.
6. Making field trips and inspections relating to specific problems or proposals.
7. Recruiting candidates and approving appointments to township boards and commissions.
8. Reporting the status of local government affairs to residents.
9. Attending public hearings for public opinion.
10. Attending township meetings to discuss, study, decide and vote on matters concerning the township.

Appointed Administrator

If the township appoints a manager or administrator, that person is responsible for taking care of the day-to-day business of the township. It is the duty of the elected officials to ensure that the performance of the administrator is efficient and effective.

When a township has a manager or administrator, there should be a definite separation of powers and responsibilities between the governing body and the administrator. Policy and legislative powers should remain the responsibility of the commissioners, while administrative functions are handled by the administrator. An administrator is appointed by the entire governing body and operates under the direction and official action of the entire board. Commissioners should avoid telling him or her what to do personally. A good working relationship is of the utmost importance, since the administrator can be useful to the commissioners as a sounding board for ideas and as a source of valuable information. Board members must not bypass the administrator and give orders directly to department heads or employees, but should work through the administrator. It is important for a commissioner to meet informally with the administrator for the purpose of exchanging ideas and opinions on the issues arising in the township.

The administrator's responsibilities vary from municipality to municipality. The administrator's power can be as confined or as broad as the governing body determines. The following list of responsibilities can be delegated to a manager or an administrator.

1. Preparing short-term and long-range objectives for recommendation to the board.
2. Preparing plans and programs to attain objectives approved by the board.
3. Determining project priorities to meet objectives approved by the board.
4. Attending meetings of boards and commissions.
5. Investigating and presenting recommendations to the governing body concerning state and federal grant programs.
6. Preparing reports to other governmental units.
7. Attending and participating at state conventions and professional association meetings.
8. Maintaining professional affiliations and keeping abreast of new developments in the field.
9. Reviewing budget performance of all departments.
10. Preparing monthly reports on all activities, including construction projects and costs and equipment purchases for submission to the board.
11. Preparing recommendations, background information and cost estimates for monthly municipal meetings.
12. Attending and participating in all municipal meetings.
13. Programming all major expenditures from a cash flow viewpoint.
14. Assisting in preparing the annual report and budget.
15. Preparing, recommending and implementing a capital improvements program.
16. Meeting with land developers, business developers and groups involved in economic development.
17. Preparing and approving news releases.
18. Maintaining public relations contacts with residents.
19. Delegating responsibility and authority for performance of assigned functions to departments.
20. Developing and updating a training plan for municipal employees.
21. Preparing and implementing a preventive maintenance program for township equipment.
22. Developing and administering municipal personnel policies, procedures and programs.
23. Reviewing applications of prospective employees, interviewing and hiring, and firing or laying off employees, when necessary.
24. Preparing and approving specifications for purchase of major equipment.
25. Directing and supervising the daily work of the administrative staff.
26. Coordinating activities of all municipal departments.
27. Ordering or approving purchases.

Personnel Management

Personnel management is a key to efficient government operation. It is probably the area which can cause the greatest problems if handled poorly. Many functions of local government are categorized under personnel management: record keeping, employee hiring policy, affirmative action, personnel in-service training plan, employee relations policy, systems for maximizing employee potential, standards for wage and salary administration, and providing for employee benefits. Even the smallest townships need to understand the importance of personnel issues, since even they are not immune from being charged with discrimination or violation of a statute.

Hiring Employees. Hiring employees involves recruiting and selecting the proper personnel. A number of personnel selection tools can be helpful to the municipality. Job descriptions should include a general definition of work to be performed, specific examples of work and required knowledge, skill and ability. A

listing of essential functions should be developed for each job. The establishment of a minimum training and experience requirement helps to provide the township with qualified applicants and also supplies prospective applicants with some details of the position's responsibilities. These selection tools are not only helpful in the hiring process, they are also invaluable in showing the board's reasoning if a rejected applicant should take issue with the decision either in court or at a public meeting.

Well-designed application forms provide the municipality with important background information on the applicant's education, experience and relevant personal information without asking questions which laws and court cases have said might be construed as improper. Personal interviews, tests and reference checks can also aid the municipality in personnel selection.

Employee Training Program. Employee training programs assist employees to attain a high quality of performance on the job. Training programs include a wide variety of activities and programs such as orientation, on-the-job training, conferences and discussions, apprenticeships, classroom training and cooperative training.

Wage and Salary Administration. Wage and salary scales are commonly based on job classifications. The classification of a job in accordance with duties and qualifications is a tedious personnel procedure. The presence of an adequate job classification system is a key element in maintaining stable management-employee relations.

A classification plan groups similar positions into classes to permit common treatment in employment practices and compensation. Basically, a classification system involves classifying positions by nature of work, level of difficulty, degree of responsibility and training and experience requirements.

Most township employees are covered under the federal Fair Labor Standards Act (FLSA) and must be paid a minimum wage and compensation for overtime work. The law defines positions which may be exempt from overtime provisions, what constitutes work hours and when punitive damages against the township may be levied.¹ Elected officials are not covered under FLSA.

Compensation Plan. The best compensation plans are based on specialized job evaluation systems. For local governments without such systems, it is best to develop an employee wage schedule by determining what competing employers are paying for similar positions. The first step is to survey the labor market. Depending on the type of position to be surveyed, the labor market can be as small as the local area or as large as the state.

To be effective, a wage schedule should be based on accurate and current information about compensation provided by other employers for similar jobs in both the public and private labor market. Usually the best indicators of the local labor market are rates being paid for comparable work in the private sector, because the private sector covers the largest segment of the labor force. Municipal officials must look at the total compensation picture. Fringe benefits are an important part of the total compensation picture and should be examined carefully.

Labor Relations Laws. The Public Employee Relations Act was established to promote orderly and constructive relationships between all public employers and their employees.² The Act grants employees the right to organize, requires employers to negotiate and bargain with employee organizations representing public employees and to enter into written agreements evidencing the result of such bargaining. It establishes procedures to protect the rights of the public employee, the public employer and the public.

The Act lists a number of activities which may lead to unfair labor practice charges for both employers and unions. It is unlawful for employers or managers to interfere, restrain or coerce employees in their rights to form and administer a union. A union, on the other hand, may not interfere with an employer complying with the provisions of the Public Employee Relations Act, nor may it restrain or coerce employees to join or not to join a union.

A separate act, commonly referred to as Act 111, covers police officers and paid firefighters and authorizes collective bargaining with public employers concerning the terms and conditions of employment, including compensation, hours, working conditions, retirement, pensions and other benefits.³ The Act provides for arbitration in order to settle disputes and requires compliance with collective bargaining agreements and the findings of arbitrators. The Police Tenure Act regulates municipal action in the suspension, removal, furloughing and reinstatement of police officers. It also provides for the rights of police officers to hearings or appeals in cases of dismissal.⁴ It applies to all first class townships having a police force of fewer than three officers.

Other Personnel Laws. A number of state and federal laws govern the treatment of employees and job applicants. An even larger number of court cases offer opinions and precedents providing direction as to how these laws are implemented. They prohibit discrimination based on race, religion, national origin, sex, age and disability. They govern who must receive a minimum wage and when overtime rates must be paid. They require that certain benefits be paid to employees injured on the job. They determine the procedure for employees who request a hearing after being terminated. Townships and individual commissioners can be subject to serious penalties for failure to adhere to these laws.

Appointment Powers

The successful operation of a municipality is a complex task requiring the time and effort of many people. Many times the elected officials and employees have insufficient time or expertise to become personally involved in every aspect of township government. The Code and state legislation allow the board to enlist the capabilities of citizens of the municipality through the creation of authorities, boards and commissions. Although some of these entities are mandatory, such as a zoning hearing board if your township has enacted a zoning ordinance, many others are permissive. The concept of authorities, boards and commissions not only allows the governing body to draw on citizens with particular expertise, but also provides a channel for citizens to become more directly involved in their government.

The members of most authorities, boards and commissions serve without pay and their primary reward is the satisfaction derived from helping the people of the township. When a township commissioner has the opportunity to recommend appointments to authorities, boards and commissions, such appointments should reflect as large a cross section of the township as possible. People from different neighborhoods, different occupational backgrounds and different interests should be appointed.

Since many appointed offices are semi-independent of the governing body, such as the zoning hearing board or municipal authority, it is especially important the persons appointed have certain personal qualifications such as patience, understanding, courteousness, reasonableness and fairness. You should also attempt to appoint people who can make unbiased judgments in dealing with township concerns.

Township commissioners' appointment powers are limited to filling actual vacancies. The board must wait until vacancies actually exist before making appointments to boards and commissions. Commonwealth Court ruled an outgoing township board of commissioners lacked the authority to make "midnight" appointments to various boards. The vacancies on the boards were not effective until after the board of commissioners' term expired.⁵

Some of the more common boards, commissions and authorities are described on the following pages. In addition to these formal bodies made up of groups of citizens, commissioners are also involved in appointment of individuals to provide a particular expertise to the township, such as the solicitor, secretary, engineer and manager.

Solicitor. One of the most critical appointments is that of municipal solicitor. In smaller townships, this individual is the only immediate source of on-site professional assistance. As in many professions, attorneys

have specialties and not every attorney has a working knowledge of land use or municipal law. The complexity of laws that have an impact on township operations make it important to identify an attorney with demonstrated capability and an interest in municipal law to fill the post. This can be done by sending a letter of interest to a number of attorneys or law firms in your region, or even using a formal request for proposals. Commissioners should know, before contacting attorneys, what they expect from a solicitor regarding attendance at meetings, if a retainer is to be provided and what is covered by the retainer. Once the best candidate is identified, the commissioners should sit down and work out a written agreement on the services to be provided and how compensation is to be calculated.

Engineer. Another common appointment, even in small townships, is that of township engineer. The engineer can be a valuable source of advice during road and bridge construction, site plan and subdivision reviews and some of the more complex environmental issues. The process of appointing an engineer is very similar to that of hiring a solicitor. A township needs an individual who has a broad, general knowledge of engineering and is accessible to assist with immediate problems and plan reviews. It is also important to have a brief written understanding with the engineer regarding attendance at meetings and hearings, hourly rates for other assistants in the firm's office and any restrictions fixed by the township board on engineering work done for other clients within the township.

Emergency Management Coordinator. This position is one of the least used, but perhaps one of the most important ones. State law dictates that each municipality have an emergency management coordinator and an emergency plan.⁶ The coordinator can be an existing employee of the township and, in fact, is often the fire chief or police chief. Because emergencies come in all forms, from toxic material spills to blizzards, commissioners must feel comfortable with the ability of the individual to function in a variety of situations. In addition, the township must have a plan spelling out how and when an emergency is declared and the powers given to the emergency coordinator. While emergencies are rare, it is the duty of the commissioners to prepare for them. Indecision or poor decisions during an emergency can be costly. The emergency management coordinator is appointed by the Governor upon the recommendation of the board of commissioners.⁷

Boards and Commissions.

Planning Commission. Planning commissions or planning departments may be created by townships.⁸ At the direction of the governing body, the planning commission may be required to prepare a comprehensive plan for the township, to prepare and make recommendations on an official map or to prepare land use control ordinances including zoning ordinances and subdivision and land development ordinances. In addition, it may be required to prepare building and housing codes, prepare environmental studies and recommend capital improvements programs for the township.

Planning commissions can be very useful as a way for citizens to make their views known on growth, planning and the direction the township is taking. With the planning commission receiving and evaluating input on these topics, citizens are able to have more discussion time on topics which concern them. Meanwhile, meetings of the board of commissioners can remain the forum where decisions are made based on the citizen input received by the planning commission.

Park and Recreation Board. Townships have the power to provide, improve, maintain and regulate public parks, parkways, playgrounds, playing fields, swimming pools, public bathing places and recreation centers. Recreation facilities can be open to nonresidents, even when in direct competition with private facilities.⁹ Many municipalities form a park and recreation board to function in an advisory capacity to the governing body in determining the amounts and kinds of recreation most needed by the citizens. The commissioners may also place the responsibility to equip, operate and maintain recreation facilities on the park and recreation board.¹⁰ Whichever approach is taken, the duties of a park and recreation board should be clearly spelled out by the commissioners so there is no blurring of the advisory and operational roles in the park and recreation programs of the township.

Zoning Hearing Board. Any township which has enacted a zoning ordinance must appoint a zoning hearing board.¹¹ The board's purpose is to hear appeals on the validity of the zoning ordinance or map or any decision of the zoning officer. In addition, the board has the power to grant variances and special exceptions to the ordinance. The zoning hearing board is either a three-member or five-member quasi-judicial board consisting of residents of the municipality who may hold no other elected or appointed position.

The zoning hearing board must appoint its own solicitor to assist in its deliberations, written decisions and appeals.¹² The municipal solicitor may not be the zoning hearing board solicitor because the opinions and decisions of the zoning hearing board may differ from the views of the commissioners. The board of commissioners may, just as any affected citizen, appeal a decision of the zoning hearing board to the courts.

Shade Tree Commission. A township may appoint a shade tree commission and give it exclusive custody and control of the shade trees in the township.¹³ Shade tree commissions have the authority to plant, remove, maintain and protect shade trees on public streets and highways in the township.

Civil Service Commission. Any township employing three or more members in its police or fire department must establish a civil service commission.¹⁴

The commission consists of three members who have the power to provide for the examination of applicants for positions and promotions, establish minimum qualifications for positions, test applicants for appointments and provide hearings in cases of dismissals or reductions in rank for those employed under civil service status.

Board of Health. Townships may establish a board of health composed of five members, or may appoint a health officer or officers who have the same powers and duties as prescribed for the board of health.¹⁵ The board may be delegated with the authority to quarantine, establish rules and regulations for drainage and seepage beds, establish emergency hospitals, make sanitary inspections, disinfect quarantine areas and enforce other health laws of the Commonwealth, regulations of the state Department of Health and Department of Environmental Protection and any ordinances of the township relating to health.

Municipal Authorities

Townships may form municipal authorities for certain purposes.¹⁶ Although the local government plays a role in the creation of an authority and appoints its board members, the authority is not part of the municipal government. An authority is an independent agency of the Commonwealth, as well as a public corporation engaged in the administration of civil government. In addition, an authority is a separate legal entity with the power to incur debt, own property and finance its activities by means of user charges or lease rentals.

The main purpose of an authority is independently to raise money for specified projects. The borrowing capacity depends on its ability to be self-supporting. Generally, authorities finance revenue-producing projects such as sewer and water facilities, solid waste disposal systems, parking garages, auditoriums, incinerators, municipal buildings, parks and swimming pools. The revenues generated by a project must be adequate to operate the project, meet all debt payment obligations and provide for reserve maintenance funds as needed.

The decision to form a new municipal authority should not be taken casually. A township creating an authority to operate the sewer system surrenders power over important public policy issues, such as the extent and cost of sewer service. An authority is not answerable to the voters as township commissioners are, nor is it answerable to the commissioners, except through the appointment of new members as terms are completed. Authorities offer no advantage in the borrowing of money. In fact, the operation of a sewer or water system by a separate entity may not be a good idea for a number of reasons. Authorities make the most sense when two or more municipalities form a joint authority to operate an area wide project that crosses municipal lines, such as a regional sewer system.

Types of Authorities. Authorities may be simply financing authorities, or they may be financing and operating authorities. A financing authority is responsible for obtaining funds, disbursing the funds for engineering, legal fees and construction, and for making scheduled principal and interest payments on the debt. A financing authority generally leases the completed project facilities back to the municipality for operation. As an example of this kind of arrangement, a municipal authority may finance and construct a sewage system and treatment facilities. Upon completion, the system is leased back to the municipality. The municipality collects all sewer rentals from the users and places that revenue in a separate municipal sewer rental fund. Lease payments are made from the sewer rental fund to the authority in amounts adequate to cover the debt service, plus additional amounts for reserve funds or major improvement funds, as appropriate. A portion of the revenue is retained by the municipality to pay for treatment plant operation and maintenance.

In this kind of leaseback arrangement, the municipality and the authority should clearly spell out the responsibilities of each, particularly with respect to capital expenditures for the system. The municipality often sets aside capital reserves within the sewer revenue fund to provide for capital expenditures, such as trucks or other movable equipment. In addition, the authority usually maintains a capital improvement fund for expansions or major improvements to the system.

The difference between a financing authority and an operating authority is that the operating authority hires the labor and provides materials and equipment to operate the project after completion. The employees work for the authority rather than the municipality. Except to enact enabling ordinances, appoint authority board members and enforce collection of delinquent accounts, the municipality has relatively little to do with the day-to-day operation of the project.

Forming a Municipal Authority. Any county, city, borough, township or school district, through passage of an ordinance by the governing body, can form an authority. In addition, two or more municipalities may join together to form a joint authority – a form of intergovernmental cooperation that responds to the need for municipalities to cooperate and deal with problems transcending municipal boundaries. Joint authorities are most often used when major capital investments are required. Joint authorities are formed for such purposes as sewage treatment, water supply, transit systems and swimming pools.

A board whose members are appointed by the governing body of the incorporating local government governs municipal authorities. Boards may not consist of fewer than five members, and boards of joint authorities should contain at least one representative from each participating municipality. The term of office is five years. Board members may succeed themselves. It is inadvisable to appoint members of a municipal governing body to the authority board.

The municipal solicitor can provide further information on the specific administrative and legislative procedures required to form an authority. When forming an authority, expert advice should be sought on all legal, financial and engineering aspects of the proposed project from available municipal specialists or hired consultants.

An authority can provide a valuable service in the municipality. Its capability to finance and operate projects provides many of the benefits of both governmental and private operations. However, since the appointed authority officials do not answer directly to the electorate, it is advisable for elected officials to exercise some degree of control over authority operations. The authority board's role and responsibilities should be clearly defined in the resolution creating the authority. For example, if an authority is formed to finance and construct several sanitary landfills for solid waste disposal in a countywide system, it may be desirable to state clearly that the authority is limited to those activities. If no limitation is placed, the authority might choose to extend its activities into collection, recycling or other aspects of the solid waste disposal program, beyond the scope originally intended by the creating municipal governing bodies.

In addition to the appointment power, there are other control mechanisms available to the governing body. Municipalities can require audits of authority accounts and can fix salaries of paid authority members. The authority is self-regulating in the sense it must show good evidence of engineering and financial feasibility in order to obtain financing.

Disbanding a Municipal Authority. An authority may be terminated after the bonds and interest secured by the pledge of revenues have been paid off. The authority may transfer its project to its incorporating municipality and be disbanded at any time after all debt obligations have been paid. Each authority terminates after 50 years, unless its lifespan has been extended by amending its articles of incorporation.

Even before the debt is paid off, the incorporating municipality may assume the project by passing an ordinance signifying its desire to do so. The incorporating municipality then must assume any outstanding obligations incurred with respect to the project and is bound by the terms of the bond indenture.¹⁷ This is the ultimate tool for control of an authority's actions and can be done even over the objections of the municipal authority board.

References

1. 29 U.S.C. 201 *et seq.*
2. 43 P.S. 1101.101; Public employee Relations Act.
3. 43 P.S. 217.1; 1968 P.L. 237, No. 111.
4. 53 P.S. 811; 1951 P.L. 586.
5. *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlth. 686, 1991.
6. 35 Pa.C.S.A. 7502.
7. 35 Pa.C.S.A. 7502. Emergency Management Services Code, Section 7502.
8. 53 P.S. 10201; Pennsylvania Municipalities Planning Code Section 201.
9. *Yorktown Tennis Club, Inc. v. York Township*. 548 A.2d 357, 120 Pa.Cmwlth. 13, 1988.
10. 53 P.S. 58009; First Class Township Code, Section 3009.
11. 53 P.S. 10901; Pennsylvania Municipalities Planning Code, Section 901.
12. 53 P.S. 10017.3; Pennsylvania Municipalities Planning Code, Section 617.3.
13. 53 P.S. 58020; First Class Township Code, Section 3020.
14. 53 P.S. 55625; First Class Township Code, Section 625.
15. 53 P.S. 56601; First Class Township Code, Section 1601.
16. 53 P.S. 303; Municipality Authorities Section 3.
17. *Mifflin County v. Mifflin County Airport Authority*, 437 A.2d 781, 63 Pa.Cmwlth. 56, 1981.

V. Fiscal Powers

A significant portion of township management involves raising and spending public money to perform government functions. Commissioners are involved in the fiscal management of the township. They are not only responsible for raising the necessary money through taxes, service charges and grants, but also for seeing that municipal funds are spent in accordance with the established budget and capital program.

Taxes

The primary source of revenue for Pennsylvania townships is local taxes. In 2003, taxes provided 42 percent of the revenues of first class townships.¹ The other significant sources of revenue were grants from federal and state agencies, including liquid fuels funds, totaling 9.6 percent of township revenues and sewer charges providing 9.9 percent of township revenues. Two chief tax sources provided the majority of tax revenues. The greatest tax yield came from the real estate tax, constituting 23 percent of all revenues, while earned income taxes came in second, contributing 11 percent of revenues.

Besides the earned income tax, a wide range of non-real estate taxes may be adopted under the authority of the Local Tax Enabling Act.² These include the per capita, realty transfer, amusement and occupation taxes. In 2003, these minor non-real estate taxes contributed 5 percent of all township revenues, but did constitute more significant shares of revenue in particular townships with special circumstances.

In the first significant change to local taxing authority since 1965, Act 222 of 2004 amended the Local Tax Enabling Act to replace the old occupational privilege tax with the emergency and municipal services tax. The maximum levy under the tax was increased from the \$10 permitted under the old tax to \$52, with a low income exemption of up to \$12,000 annually. School districts that previously shared the occupational privilege tax with municipalities retain the right to share the new emergency and municipal services tax at the previous level.

In addition to the general purpose levy, additional special purpose real estate millages may be levied by the township. Most of these are authorized in the Code. They are enacted to pay for specific municipal purposes, such as a municipal building, fire protection, recreation, debt service, a permanent improvement fund, shade trees, pensions, libraries and ambulance and rescue squads. Some of these special levies carry a maximum millage rate; others are unlimited. But, all the revenue from each special levy must be maintained in a separate fund and be used only for its specified purpose.

All real estate taxes, whether general or special purpose, are levied on an annual basis and collected by the elected township treasurer. The treasurer is also responsible for collecting assessments for street lighting, where levied. The commissioners can establish the manner and schedule for the treasurer to pay over tax receipts to the township. As evidenced above, real estate taxes represent a significant proportion of revenue in townships. Because of the importance of this tax revenue source, the board of commissioners should establish regulations to assure timely payment by the treasurer. The commissioners also must assure that a township officer, usually the manager, secretary or the auditors, reaches settlement with the treasurer at the end of the year, closing out the tax duplicate before the duplicate for the new year is issued. More information regarding the role of the elected treasurer as tax collector can be found in the *Tax Collectors' Manual* available from the Department of Community and Economic Development.

Townships have available a wide range of non-real estate taxes. An occupation tax, which is authorized in the Code, must be levied at the same millage rate as the township real estate tax. Besides the earned income tax, a wide range of taxes may be adopted under the authority of the Local Tax Enabling Act.³ These include per capita, realty transfer, business gross receipts, amusement, occupational privilege and occupation taxes. In

2003, non-real estate taxes contributed 23.8 percent of all township revenues. Taxes levied under the Local Tax Enabling Act, often called Act 511 taxes, may be collected in a variety of ways as determined by the board of commissioners. While some of these taxes may be assigned to the elected treasurer, it is not required. In this role, the treasurer acts as an appointed officer and is subject to the regulations the township may set for any appointed officer. Usually the elected treasurer is assigned to the collection of occupation and per capita taxes where levied. A collection agency, whether a joint collection bureau formed by taxing jurisdictions or a private collection company, may also be used. This is most common in the case of the earned income tax. The earned income tax is sometimes the largest source of tax revenue for a township and the quality of collection varies among municipalities. The loss of tax revenue and associated interest is greatly reduced through efficient collection and prompt deposit into a township account. All earned income tax officers must be bonded in an amount equal to the maximum amount of taxes in their possession at any one time. The county recorder of deeds always collects realty transfer taxes. Business gross receipts taxes are usually collected by township employees.

More information on the taxes authorized for use by a township can be found in the *Taxation Manual* available from the Department of Community and Economic Development.

The Budget

The budget is a plan for spending township money. Its preparation requires informed decisions on the part of township officials to identify the purposes for spending this money, the amount to be spent and revenues necessary to support such expenditures. This affords the commissioner valuable planning experience and helps assure the fiscal soundness of each year's operation.

The Department of Community and Economic Development, with the cooperation of the municipal associations, have prepared budget forms. The budget form is based on budgeting by program. Money is allocated to programs or activities such as police, streets and highways, recreation and parks or similar categories. Municipal working budgets often break down each program area into line items, such as salaries and materials and supplies. Through the program budget, the municipal official is able to compare and judge the reasonableness of expenditures for each function.

The township budget must be officially enacted before December 31 of each year.⁴ The First Class Township Code contains procedures for reopening a budget after a municipal election, for making supplemental appropriations at any time, and for making budget transfers during the last nine months of the year. This authority should not be used as a justification for poor prior planning. In fact, even a carefully prepared budget needs to be changed under certain circumstances. An emergency situation creates needs not apparent during the budget process. Realized revenues may be much more or less than expected or an opportunity to obtain favorable loan or grant funds can force a shift in the priority of projects from one year to another.

During the budgeting process, attention focuses on the General Fund because this is where most financial activity is concentrated. However, other township funds must be included in the budget, such as planned revenues and expenditures for the highway aid fund, capital improvement fund and proprietary funds such as the sewer fund. Any planned transfers between funds must be shown. Some funds, particularly agency and fiduciary funds have little activity. For more information on working with the budget you should refer to the *Fiscal Management Handbook* distributed by the Department of Community and Economic Development.

Projecting Revenues and Expenditures. When preparing a budget for the upcoming year, it is common practice to examine the expenditures and revenues of past years in order to project estimates for the next. This procedure can provide accurate information if items are first broken down and compared by function or activity and if past trends are likely to be representative of the situation expected in the next year. Simple graphs not only help show past trends of revenue receipts and expenditures, but they can also illustrate what might be expected in the future.

The technique is simple. By using the municipality's annual financial reports over the past several years, you can plot on a graph revenue receipts and expenditures for a given year. When recording the total revenue receipts, each source of revenue must be considered separately before it is added to the total to determine whether continued funding can be expected. When recording revenue receipts you would not include the balance carried forward from the previous year or non-revenue receipts, such as borrowed funds, transferred funds or one-time revenue sources, such as a sale of property or grant which would greatly distort a trend. You would include taxes, highway aid, departmental earnings and similar types of revenues received on a regular basis.

Total expenditures should reflect the ordinary expenses of a municipality over the past several years. Costs, such as municipal administration, police services, fire protection, street and highway construction and maintenance are included.

The Budget Calendar

A budget calendar is a plan for developing the budget in a timely manner to avoid last minute efforts to adopt a budget before the deadline. The budget calendar is a guide for the participation of elected or appointed officials in a time-scheduled budget adoption process.

A typical budget calendar is illustrated below. You will note that specific activities or events leading to the adoption of a budget are identified, and the deadline is indicated for the person responsible for the activity. You will find variables are often involved; for example, dates may have to be adjusted depending upon when the county supplies tax duplicates.

The budget calendar illustrated is a typical example. Your township may want to omit steps shown in the example, or you may wish to add to it; however, excessive detail in the budget calendar is likely to lead to confusion. The main reason for the budget calendar is to provide a plan for developing and adopting a budget. When making a budget calendar for your municipality, point out the activity to be done, schedule a due date for when it must be done and name the person or position responsible for getting it done.

Typical Budget Calendar

Due Date	Budget Activity	Responsible Person
September 1	Obtain annual budget forms	Secretary
September 15	Post current year expenditure and revenue estimates on form	Secretary
September 30	Certification of minimum municipal obligation for pension plans	Chief administrative officer
October 1	Project revenue estimates for next year	Secretary and/or Board
October 30	Submit activity expenditure estimates to secretary	Department heads
November 1	Enter estimates on budget form	Secretary
November 1-20	Conduct full review of budget	Board of Commissioners
November 20-30	Tentative adoption	Board of Commissioners
November 30	Advertise budget	Secretary
December 3-23	Budget open to public inspection	Secretary
December 27	Adopt budget and ordinance setting real estate tax rate	Board of commissioners
January 2	Create budget accounts in new ledgers	Secretary

Capital Improvements Planning and Budgeting

Sound financial management is principally aimed at securing the most use from available or projected financial resources. The capital improvements program and related capital budget are the primary elements of sound,

long-range financial planning. Townships are specifically authorized to create capital reserve funds to implement capital improvements.⁵ Townships may also establish revolving funds for capital improvements and fund them with special taxes.⁶

Capital Improvements Program. A capital improvement is a major facility involving a non-recurring cost which usually requires large capital outlay, but brings returns over a long period of time. Programming simply involves deciding what a community needs most in coming years and devising a schedule to pay for these facilities within the bounds of the community's ability to finance them. Non-recurring, non-capital items such as major engineering studies may also be included for planning purposes. Generally a five or six-year period is used for the capital improvements program and expenditures. Construction projects, major purchases and road work are scheduled during each year of the plan according to available funding.

Advantages of a capital improvements program include:

1. Implementing the community's goals, objectives and comprehensive plan efficiently.
2. Coordinating plans and policies to avoid overlapping projects.
3. Maintaining financial stability through minimizing fluctuations in the tax rate.
4. Lengthening available lead-time to avoid last minute delays caused by technical difficulties and scheduling of resources.
5. Increasing the likelihood of an improved credit rating and interest savings.
6. Enhancing opportunities for state and federal grants.

Common elements involved in developing a capital improvements program include determining capital costs, translating capital costs into annual costs, comparing costs with available resources, determining priorities and developing the financial schedule. An engineer or architect should make cost estimates of capital improvements. However, industry standards may be used for rough, preliminary estimates. State and federal subsidies may reduce local costs. It is important to translate capital costs into the two major elements of annual costs: annual debt service or borrowing costs (principal and interest) and costs of operating the facility.

The following methods may finance the costs:

1. Payment in advance from deposits in a special fund or reserve.
2. A pay as you go approach through annual appropriation.
3. The sale of general obligation or revenue bonds or notes or short term loans.
4. Donations.
5. Grants from state or federal sources.
6. A combination of the above methods.

Each year, the capital improvements program should be updated by omitting the first year and adding on a new ending year. A township may find priorities have shifted or new funds have been made available. Normally, the first year is used as a basis for the yearly capital budget.

Capital Budget. The capital budget is an outgrowth of the capital improvements program because it outlines those capital expenditures the township is required to make in the coming year. Normally, a capital budget is set up a year at a time. Future planning decisions affecting the capital budget can be incorporated into the program merely by using the capital improvements program to establish priorities and change the budget as resources permit.

Contracts

There are three general types of contracts a municipality may enter into: a negotiated contract, a competitive bid contract and a contract for professional services. Negotiated contracts are permitted for all purchases and contracts not exceeding \$10,000. The First Class Township Code requires at least three written or telephone price quotations for contracts between \$4,000 and \$10,000.⁷ A written record of the price quotes must be made and retained on file for three years. Informal price quotes are not required for purchases below \$4,000, but are a sound business practice. Contracts within certain specified categories for purchases above \$10,000 are exempted from mandatory bidding requirements.

For most purchases or contracts in excess of \$10,000, a municipality must advertise for a competitive bid contract.⁸ Basically, there are two types of competitive contracts: a lump sum contract and a unit price contract. The lump sum contract obligates the contractor to provide the goods or services according to the plans and specifications for a specified amount of money. The purchase of municipal road equipment is a good example of a competitive bid item for a lump sum amount.

The second type of competitive bid contract is the unit price contract. This contract is based on an estimate of unit prices for different types of materials to be supplied, and it provides for compensation to the contractor for each actual unit supplied at the agreed upon price. Bids are compared by the estimated quantities needed at the contractor's proposed unit price. As noted earlier in this handbook under surcharges, the board cannot waive advertising for competitive bids when the amount of the purchase or contract exceeds \$10,000. Neither can the board contract for services on a piecemeal basis. Any commissioner who knowingly votes in violation of these provisions is subject to a surcharge of ten percent of the full amount of the contract.

The third type of contract is for professional services. Regardless of the cost, professional services contracts are not required to be obtained through competitive bidding, although it is best to interview a number of applicants or entertain a number of proposals for professional services. More complete information on purchasing requirements and procedures can be found in the *Purchasing Handbook for Local Governments* available from the Department of Community and Economic Development.

Officers' Bonds

It is the responsibility of the board of commissioners to designate the elected and appointed officials and employees of the township to be covered by a fidelity bond.⁹ The bond serves to protect the township from monetary loss either through dishonesty or willful neglect by officials and employees. Bonds in various amounts are offered by a number of surety companies. The solicitor of the township usually prepares or approves the form of the bond after the persons to be covered and the amounts have been determined.

The First Class Township Code requires persons holding certain key positions be bonded, for example the treasurer and controller. In the case of members of the board and other officials, the Code makes bonding permissive. In other words, the commissioners may provide for bonding these persons if believed necessary. All officials and employees handling township funds should be bonded. The amount of the bond should correspond to the amount of money the individual can access. Bonding requirements should be reviewed every year and new bonds obtained on an annual basis. The solicitor should review the form of the bond to determine that it does not contain conditions detrimental to the township's best interests. Blanket bonds are available, listing all bonded employees and the amount of their bond on a single form, thus reducing paperwork. These bonds are generally less expensive than purchasing a series of individual bonds.

The township pays the premiums on all bonds for its officers and employees. All taxing districts share the premium of their tax collector's bond in proportion to the amount shown on their tax duplicates. Some counties have instituted countywide bidding for all tax collector bonds.

Municipal Borrowing

All township borrowing, including the issuance of tax anticipation notes, is governed by the terms of the Local Government Unit Debt Act.¹⁰ Before entering into any borrowing action, the legal and financial details should be worked out with the municipal solicitor, a bond counsel or other financial consultant. The Department of Community and Economic Development must approve borrowing actions in excess of \$125,000 or 30 percent of the borrowing base. The Local Government Unit Debt Act sets the non-electoral debt limit for townships as 250 percent of the average total revenues over the past three years. It also establishes important procedural requirements for incurring debt. Major provisions are listed below.

1. No limit has been established on electoral debt.
2. Bond anticipation notes may be issued in order to obtain funds pending the sale of long-term bonds or notes.
3. Bonds or notes may be sold at public or private sales.
4. The maturity date on bonds and notes may not be more than forty years or not more than the life of the project being financed, whichever occurs first.
5. Debt repaid solely from rents and other user fees (self-liquidating debt) is not subject to the debt limit.
6. Temporary indebtedness, such as tax and revenue anticipation loans, may not exceed 85 percent of the outstanding tax revenues anticipated and must be repaid during the fiscal year incurred.
7. A municipality in financial crisis may be able to issue unfunded debt in order to meet financial obligations.

For additional information on municipal borrowing, please consult the *Debt Management Handbook* available from the Department of Community and Economic Development.

Pension Funding

Townships are authorized to create pension funds for their employees or join the Pennsylvania Municipal Retirement System. Townships with three or more full-time police officers must establish a police pension fund. The Municipal Pension Plan Funding Standard and Recovery Act requires municipalities to meet the actuarial funding requirements of their pension plans.¹¹ Municipalities are also required to include the minimum municipal pension obligation in their annual budgets. If the municipality fails to make timely payment into the pension fund it is subject to interest penalties. The Act also provides for state aid for all municipal employee pension plans for the first time.

References

1. *Local Government Financial Statistics*, 1997., Pennsylvania Department of Community and Economic Development, 1997, p.556-7.
2. 53 P.S. 56709; First Class Township Code, Section 1709.
3. 53 P.S. 6901; Local Tax Enabling Act.
4. 53 P.S. 56701; First Class Township Code, Section 1701.
5. 53 P.S. 56558; First Class Township Code, Section 1502(LVIII); *Turner v. Cheltenham Township*, 19 D.&C.2d 105, at 112, 1958, C.P. Montgomery Co.
6. 53 P.S. 57601; First Class Township Code, Section 2601.
7. 53 P.S. 56802(a.1); First Class Township Code, Section 1802(a.1).
8. 53 P.S. 56802; First Class Township Code, Section 1802.
9. 53 P.S. 55602; First Class Township Code, Section 602.
10. 53 Pa.C.S.A. 8001; Local Government Unit Debt Act.
11. 53 P.S. 895.101; Municipal Pension Plan Funding Standard and Recovery Act.

VI. Municipal Services

Before the twentieth century, township services were generally restricted to the maintenance of roads. The emergence of densely settled areas on urban fringes led to the creation of first class townships in 1899. With the continued growth and dispersal of urban population in the past few decades, the need for increased municipal services was met by new authorizations in the Code. The extent of municipal services now provided by first class townships covers a wide range compared to those provided by cities and large boroughs.

Roads

Maintenance of streets and roads statewide is still a primary function in first class townships. In 2003, expenditures for streets and roads constituted 13.5 percent of all township expenditures. Almost 17 percent of township road expenditures were met from liquid fuels funds.

The Code imposes explicit duties on commissioners in regard to keeping the roads maintained.¹ Commissioners have a statutory duty to repair and maintain public roads. This duty can be enforced in the courts by mandamus.² While the Code requires townships to keep roads and bridges in repair and to keep roads free of obstructions, a court has declared that townships do not have an enforceable duty to inspect, install or replace street signs, or a duty to clear vegetation obstructing views at intersections.³ These activities, while authorized by the Code, are discretionary on the part of townships. However, courts have been moving toward requiring a greater level of care on the part of all local governments. These Code authorizations should not be taken lightly.

The Code contains extensive provisions for laying out, opening and repairing roads. A valuable overview of this function is found in *Maintenance Practices for Local Roads* distributed by the Pennsylvania Department of Transportation.

Township commissioners have the power to provide for sidewalks within the township. These may be installed by the township at public expense or paid in part or totally by abutting property owners.⁴

Every township in the state participates in the care and maintenance of streets and roads. Increasing concern for properly maintained roads and better snow removal make more townships look at the possibility of working with their neighbors in some manner. Joint purchasing of salt, antiskid or road signs is efficient and easy. Joint purchases of large, specialized and seldom-used pieces of equipment or jointly entering into contracts guaranteeing minimum hours of rent to use such equipment are also becoming more common. Street sweepers, graders, pavers, rollers, loaders and backhoes are types of equipment which townships might find hard to justify if they sat in maintenance yards for all but a few hours a year. Even construction projects using joint crews are within the range of possibility for townships committed to providing the best service at the least cost.

All of these examples have been used at various times and locations in the state. While not required, formal written agreements help to define responsibilities from who pays for maintenance to what happens if the machine is destroyed. The best-intentioned people can easily misunderstand each other and the easy working relationships that currently exist between municipalities may change with the arrival of new personnel or elected officials.

Street Lighting

The First Class Township Code authorizes commissioners to provide street lights. These are paid either from the general revenues⁵ or provided to a special district through assessments on abutting property owners or by a combination of these payment methods.⁶ The township may also provide ornamental lighting to any section of the township with the costs being paid by assessments on abutting property owners. Because street lighting may be a service offered only in certain sections of a township, street lighting districts are often created within which property owners are assessed a fixed rate on a front foot basis to pay for this service. Some latitude is allowed in the method of setting rates and granting exemptions based upon specific, unusual physical situations. A set of rules and regulations that clearly delineates the means by which properties are assessed should be prepared for each village or district.

Townships may include provisions in their subdivision and land development ordinances to regulate the construction of street lighting systems, including distances between lights, types of lights and styles of poles.

Police

Townships have the general power to do what is necessary to protect the safety of their citizens.⁷ Townships are authorized to establish police departments and prescribe regulations to define the duties of police officers.⁸ They may also contract for police services with adjoining municipalities.⁹ All first class townships have some form of local police agency providing protection, including local police forces, regional police forces and contracted services. Police services constituted the largest expenditure item for townships in 2003 with 18 percent of all expenditures.

All police officers must complete minimum requirements for training set by the Municipal Police Officers' Educational and Training Commission prior to receiving power to enforce the Pennsylvania Crimes Code and Vehicle Code and before possessing the authority to carry a firearm.¹⁰ The Commission also requires that applicants for police officer positions undergo physical fitness exams, psychological exams and background investigations prior to employment. However, the federal Americans with Disabilities Act has forbidden the use of physical or psychological exams until after the applicant has been extended an offer of employment.¹¹ Annual in-service training is also required for all municipal police officers to remain certified for employment. This requirement applies to both part-time and full-time officers.

The Code requires civil service coverage for police officers in townships with three or more officers.¹² All appointments and promotions must be made under civil service regulations. In addition, any township with three or more full-time police officers must establish a police pension fund.¹³ Additional information can be found in *Model Rules and Regulations for a Municipal Civil Service Commission* published by the Department of Community and Economic Development.

Because of the increasing cost of providing local police services, there has been a rapidly growing interest across the state in creating regional police agencies serving two or more municipalities. Many townships are now receiving their police services from such regional organizations. The larger forces, permitted through joint action provide 24-hour coverage, allow for the development of specialized fields within the police force and make better use of equipment and staff. The regional approach appeals to townships which either had no local police coverage or were served only by part-time forces.

Firefighting

Another basic exercise of the general police powers of townships is regulation of fire protection. The First Class Township Code gives commissioners the power to control fire protection activities within the township.¹⁴

To secure fire protection for township inhabitants, the board of commissioners may purchase fire apparatus for use in the township or appropriate funds to fire companies located within the township. The township may also contract with nearby municipalities or fire companies for fire protection services. In addition, the township may construct buildings to house fire apparatus, but only after voter approval in a referendum.¹⁵ In 2003, fire protection expenditures totaled 4 percent of all township expenditures.

The Code gives boards of commissioners broad power to regulate fire protection activities, including the power and responsibility to organize an effective fire protection service for the benefit of the township's inhabitants.¹⁶ These powers extend even to the point of enacting an ordinance preventing a particular fire company from responding to fire calls within the municipality and enforcing the ordinance through an injunction.¹⁷ In almost every case, fire service activities are delegated to independent, volunteer fire companies. Decisions on budgeting and paying appropriated funds are entirely at the discretion of the board of commissioners, unless controlled by an enforceable contractual obligation.¹⁸ The amount of township financial support can range from substantial to nothing. A special fire tax millage may be levied for fire protection purposes.

Where the fire company is located within its borders, the township is responsible for carrying workers' compensation coverage for the firefighters.¹⁹ Where the township is served by one or more fire companies outside its boundaries, there is a moral, but not a legal obligation to contribute to the cost of workers' compensation premiums paid by the host municipality. Townships are also legally liable for damages caused by the actions of volunteer firefighters in performing their official duties.²⁰ In cases where the township is served by a fire company outside its boundaries, an intergovernmental contract with the host municipality is the most appropriate method for regulating issues, such as the sharing of operational costs, workers' compensation costs and liability insurance premiums, as well as designation of the fire company to receive the township's fire relief allocation from the state.

A significant aspect of fire protection is developing a system of fire hydrants that benefit residents served by a public water supply. Not all residents have public water available; less developed areas are served by tanker trucks, farm ponds or streams. Townships have to consider their firefighting needs when formulating subdivision and land development standards. When water supply systems are extended or new ones created, the township should be assured that the network of pipes provides the correct pressure and hydrant location for fire suppression.

Ambulance/Rescue Services

Traditionally allied with fire protection are ambulance and rescue services. In the past, the volunteers who provided firefighting services often would provide ambulance and rescue services. The scenes of accidents, fires and other incidents often require assistance to injured individuals, as well as to property. While ambulance service may have been a natural outgrowth of firefighting, the hours of training required for emergency medical technician certification often makes it difficult for a volunteer firefighter to be cross-trained as a paramedic. Where historically there may have been one unit for both emergency services, there is now often two. Volunteers, however, are difficult to find in light of the rigorous training requirements. The response of ambulance services is often to hire professionals so that at least one trained crew member is available. This is more common as the number of emergency calls increase and as fewer volunteers are available during daylight hours.

Townships are authorized to support ambulance and rescue services.²¹ The service may be volunteer, offered directly by township employees or provided by a nonprofit organization with paid employees. This is an area where some of the most innovative financing and cooperative strategies in local government are being used.

Parks and Recreation

Townships may acquire and operate parks and other recreation facilities and may also acquire land for future park development.²² The Pennsylvania Municipalities Planning Code allows townships to require developers of residential subdivisions to provide land, payment of fees in lieu of a land donation, construction of facilities, private reservation of land or some combination of these for park or recreational purposes.²³ The township must have a recreation plan in effect and, among other requirements, the land or fees must be used at a site accessible to the development.

The township may operate the facilities directly or assign this duty to a recreation board. The recreation board may be a joint board with other municipalities and school districts.²⁴ The Code authorizes a special tax for park and recreation purposes, but costs may also be met from general township funds.

Joint recreation programs with other communities and school districts serve a number of positive purposes. Many recreation activities need a minimum number of participants to be a success or to be offered. Neighboring communities offering competing programs often find that the activities of both will fail. There is always a population in need of recreational programs, but there may not be a large enough target population in two communities to support the same activity in both. Staff hired by two nearby communities often duplicate the efforts of each other and increase the overall cost to the participants and taxpayers. In addition, the school district often serves the same communities and may provide yet another set of programs. Joint operation can usually provide better programs at lower costs, and certainly joint planning always provides benefits to all participating entities with no out of pocket expense.

School districts often have recreation facilities that are underutilized. From early June through the end of August, school auditoriums, multipurpose rooms and libraries are empty and playgrounds, play areas and athletic fields are unused. A community should explore every opportunity to fully utilize these facilities which its taxpayers have already built before it embarks on park acquisition and development programs. Parks and recreation plans should include all public facilities when future needs are being determined. Cooperative programs can benefit their mutual taxpayers if both the township and school district understand the specific needs and problems faced by the other party.

Libraries and Cultural Services

Other services townships provide include libraries and cultural services. Townships often contribute to the funding of a local public library to ensure their citizens have access. Townships may cooperate in funding a regional library in a nearby town or may undertake the provision of these services themselves. In addition to using general township funds to support libraries, townships may also levy a specific millage to fund them.²⁵ Public library service is often provided by local nonprofit groups or in conjunction with school districts. Regardless of the method chosen, townships may provide assistance.

The Code gives townships a similar role with other community cultural services. Activities such as bicentennials, historical pageants or similar programs may be assisted with township funds.²⁶

Building and Housing Codes

Building and housing codes are the way townships exercise their police powers to regulate construction and maintain the quality of existing structures. Building codes attempt to assure the construction of safe structures to protect their occupants from injury resulting from collapse, rapid conflagration and other problems with new construction. Housing codes provide minimum standards for the use and occupancy of dwelling units and residential structures.

Building codes regulate the erection, construction, enlargement, alteration, repair, moving, renovation, conversion and demolition of buildings or structures. Building, plumbing, electrical and/or fire prevention codes are in place to ensure that new buildings are structurally sound. Fire hazards are reduced by controlling the type and use of materials and methods of construction, especially for such potentially hazardous systems as heating and electrical wiring. Sufficient means of egress are provided to allow the occupants of a structure to escape safely in case of a fire. The health of occupants is protected by regulating how water enters the property and how human and other wastes are carried away.

In 1999, the state enacted a Uniform Construction Code (UCC) that established the BOCA Code, and its successor codes, as the minimum building code in Pennsylvania.²⁸ Administration and enforcement of the UCC is voluntary for townships. The initial election period, during which all of Pennsylvania's 2,565 municipalities were allowed to decide whether the UCC would be administered and enforced locally, officially closed in August of 2004. Municipalities are permitted to change their initial decision upon proper notification of the Department of Labor and Industry. Since the initial election period, a number of municipalities who originally opted out have elected to reverse their initial decision. By September of 2005, 2,231 municipalities, or 91.3 percent of the total, had chosen the "opt-in" option.

Townships that choose to administer and enforce the UCC must follow the requirements of the act. Building inspectors must be certified by the Department of Labor and Industry. Lack of enforcement could open the township and individual commissioners to the possibility of legal action should an injury or financial loss occur when it was reasonable to expect that proper enforcement of existing codes would have prevented the incident.

Housing codes set forth minimum standards designed to provide decent, safe and sanitary dwelling units for human occupancy. They include minimum standards for living space, density of occupancy, light and ventilation, fire and health safety. They regulate facilities such as water supply, drainage, electricity, washing, bathing, toilet and cooking equipment and their maintenance.

Proper building and housing code enforcement requires experienced and well trained inspectors. Larger municipalities may utilize a team of inspection officials to regulate the various aspects of building construction such as structural, electrical and plumbing. Smaller townships may discover that hiring code enforcement professionals is an impossible task without combining the resources and building activity of two or more communities. There are many examples of such cooperation throughout Pennsylvania. Code and building enforcement is one of the most successful programs that council of governments (COGs) operate for townships and boroughs in the state. Municipalities joining together or using COGs, rather than acting alone, are able to attract more qualified persons to manage their programs.

Sewer and Water Services

Townships have the power to construct and operate their own sewer systems.²⁸ In years past, restrictive debt limits made it hard for townships to borrow money to construct sewer systems, encouraging the use of authorities for this purpose. With the change in the Constitution in 1968, this is no longer the case, but many townships continue to form authorities to construct and operate sewage collection and disposal systems. The need for special expertise to operate such a system and the hesitancy of elected officials to become directly responsible for setting sewer rates are contributing factors to the continued use of authorities. Once created, an authority becomes a separate entity and commissioners can affect its decisions only by appointing members. The operation of the authority is governed under the terms of the Municipality Authorities Act.²⁹ For additional information on authorities, please see *Municipal Authorities in Pennsylvania*, a publication available from the Department of Community and Economic Development.

Collection, treatment and disposal of sewage are the fastest growing expenditure areas for local governments. In 2003, sewer expenditures by township governments (not counting authorities) comprised 9 percent of all

township expenditures. Sewage service may be the single most costly municipal service for the average homeowner. In some places, household sewer bills may exceed real estate taxes.

Townships may operate water supply systems or may contract with private utilities or adjoining municipalities for water supply services.³⁰ In addition, authorities are frequently used to construct and operate water systems. Water supply systems are coming under greater scrutiny by state and federal regulatory agencies and meeting standards for the purity of a public water supply is much more complex than in the past. Townships are sometimes faced with taking over and operating small community water systems that can no longer afford to operate on their own.

Emergency Management

One of the newer services that townships must provide is emergency management.³¹ An emergency management coordinator must be appointed and a plan prepared providing reasonable guidelines during an emergency. Emergencies can range from severe storms to plane crashes to toxic spills. Emergency management is not often needed or even thought about, but it is a mandated function of townships and requires action by the board of commissioners.

References

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2. *Lank v. Hughes*, 167 A.2d 268, 402 Pa. 284, 1961.
3. *Bruce v. Commonwealth, Department of Transportation*, 588 A.2d 974, 138 Pa.Cmwth. 187, 1991.
4. 53 P.S. 57301; First Class Township Code, Section 2301; *Mount Lebanon Township V. HOBBS*, 189 A.2D 316, 201 PA.SUPER. 30, AT 34, 1963.
5. 53 P.S. 56512; First Class Township Code, Section 1502(XII).
6. 53 P.S. 56513; First Class Township Code, Section 1502 (XIII).
7. 53 P.S. 56510; First Class Township Code, Section 1502(X).
8. 53 P.S. 56401, 56505; First Class Township Code, Sections 1401 and 1502(V); *Brenckle v. Shaler Township*, 281 A.2d 920, 3 Pa.Cmwth. 347, at 351, 1971.
9. 53 P.S. 56553, 56554; First Class Township Code, Sections 1502(LIII) and 1502(LIV).
10. 53 Pa.C.S.A. 2167; 1996 P.L. 1158, No.177, Section 1.
11. 42 U.S.C. 12101, Title 1, Section 102(c)(2), Americans With Disabilities Act, 1990.
12. 53 P.S. 55625; First Class Township Code, Section 625.
13. 53 P.S. 767; 1955 P.L. 1804, No. 600.
14. 53 P.S. 56516; First Class Township Code, Section 1502(XVI); *Palmer Township Fire Co. v. Palmer Township*, 1 D.&C.3d 417, at 424, 1973, C.P. Northampton Co.
15. 53 P.S. 56517; First Class Township Code, Section 1502(XVII); *Oswald v. Whitehall Township*, 72 D.&C.2d 311, at 314, 1976, C.P. Lehigh Co.
16. *Lacey Park Volunteer Fire Co. v. Board of Supervisors of Warminster Township*, 365 A.2d 880, 27 Pa.Cwmlth. 54 at 57, 1976.
17. *West Manchester Township v. Bair Community Fire Co.*, 6 D.&C.4th 271, 1990.
18. *Commonwealth ex rel. Fortney v. Bartol*, 20 A.2d 313, 342 Pa. 172, at 176 1941; *Uzdilla v. Hanover Township*, 39 Luz.L.Reg.Rep. 317, at 318, 1947.
19. 77 P.S. 1031; Workers' Compensation Act, Section 601.
20. 42 Pa.C.S.A. 8501, 8541; Political Subdivision Tort Claims Act.
21. 53 P.S. 56534; First Class Township Code, Section 1502(XXXIV).
22. 53 P.S. 58001; First Class Township Code, Section 3001; *Pidstawski v. South Whitehall Township*, 380 A.2d 1322, 33 Pa.Cmwth. 162, at 164, 1977.
23. 53 P.S. 10503; Pennsylvania Municipalities Planning Code, Section 503(11).
24. 53 P.S. 58009; First Class Township Code, Section 3009.
25. 24 P.S. 4401; Library Code, Section 401.
26. 53 P.S. 56569; First Class Township Code, Section 1502(LXIX).

27. 53 P.S. 56519; First Class Township Code, Section 1502(XIX); *Salisbury Township v. Sun Oil Company*, 29 Lehigh.L.J. 59, 1961, appeal dismissed 179 A.2d 195, 406 Pa. 604.
28. 53 P.S. 57401; First Class Township Code, Section 2401; *Ackerman v. North Huntingdon Township*, 261 A.2d 570, 437 Pa. 49, at 54, 1970; *Lauden Construction, Inc. v. Upper Dublin Township*, 41 D.&C.2d 479, at 485, 1960, Q.S. Montgomery Co.
29. 53 P.S. 301 *et seq.*; Municipality Authorities Act.
30. 53 P.S. 57701; First Class Township Code, Section 2701.
31. 35 Pa.C.S. 7501 *et seq.*; Emergency Management Services Code, Section 7501.

VII. Land Use Control and Environmental Regulation

The power and responsibility to plan for land use and its regulation lies exclusively with local government. Local governments are given the power to plan their own community development through the Pennsylvania Municipalities Planning Code. No state agency is assigned the responsibility to administer any of the land use powers in the event a unit of local government fails to exercise a delegated power. The Planning Code is a true enabling act giving municipalities great leeway in shaping their own land use programs. If a township misuses any delegated power, a well-formulated article in the Planning Code outlines the steps a landowner or aggrieved person can follow to have his or her day in court.

The Pennsylvania Municipalities Planning Code establishes the basic legislation for a municipality in Pennsylvania to plan for community development through a comprehensive development plan through zoning, subdivision and land development ordinances.¹ The Act provides for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, and authorizes these bodies to charge fees, make inspections and hold public hearings. The Act also provides for appropriations, appeals to courts and penalties for violations.

Land use controls may be looked upon as an ounce of prevention, since they offer protection against undesirable effects of development or the need for costly correction later. A subdivision with a poorly designed circulation system, or otherwise inadequate streets, causes traffic problems and higher taxes. Inadequate drainage can be prevented by a subdivision and land development ordinance. Zoning establishes adequate building setbacks so that future road widening does not wipe out substantial portions of front yards. Zoning also reduces the costs of right-of-way acquisitions and avoids costly relocations. Land use controls must be exercised through the appropriate ordinances. Any denial of a proposal must cite the specific section(s) of the ordinance the plan violates. Denial of an application cannot be based merely on what an individual commissioner believes is good planning. Conditions may not be placed on approvals that are not authorized by the Planning Code and the local ordinance. For example, a recent court case has held that municipalities cannot condition subdivision approval on dedication of additional abutting road frontage property to the municipality.²

Copies of the Planning Code and other publications relating to municipal planning and zoning functions are available from the Department of Community and Economic Development.

Comprehensive Planning

Development controls are the tools to implement comprehensive land use plans, or master plans as they are sometimes called. Planning is the process of making decisions today for actions to occur in the future. A comprehensive plan for a relatively isolated or slowly growing community may need little or no change for a decade. Conversely, any municipality within commuting distance of a growth-inducing facility, such as a new industrial plant, recreation complex, or an expanded mining operation, needs to reassess the adequacy of its comprehensive plan frequently.

Comprehensive planning is what local officials and their planning commissions do as the basis for the regulation of land use and control of development in the township. A zoning ordinance should conform to the comprehensive plan for the municipality. It must, at a minimum, contain a statement of community development objectives. If zoning regulations lack evidence of good planning, they stand a good chance of being rejected or overruled if a controversy with a developer reaches the courts.

Amendments to the MPC in 2000 intended to encourage greater intergovernmental cooperation have led to over 600 cities, boroughs and townships becoming part of a multi-municipal planning group. Article XI of the MPC provides additional planning and regulatory options and incentives to municipalities that adopt

multi-municipal plans. Commonwealth agencies, especially DCED and the Governor's Center for Local Government Services, provide funding for new multi-municipal plans, implementing ordinances and other regional initiatives. State agencies are also directed to consider and may even rely upon multi-municipal plans and resultant zoning ordinances in their funding and permitting processes. A multi-municipal plan can provide supervisors and other local officials with a broader perspective and greater opportunity to tackle larger planning and land use issues.

A comprehensive plan need not be overly complicated or expensive, even for a small municipality. Briefly, the Planning Code requires a comprehensive plan to include:

1. A statement of the township's objectives with respect to future growth and development. This includes the location, character and timing of future development. These objectives may also serve as a statement of community development objectives that are required in any zoning ordinance.
2. A land use plan describing the amount and intensity of uses appropriate for residential, agricultural, industrial and businesses. Soil conditions, traffic, topography, flood plains, natural resources and similar factors should be taken into account.
3. A plan providing for the character and timing of future facilities and utilities, such as recreation, sewage disposal, refuse disposal, water supply and similar services.
4. A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality. The plan may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing of different dwelling types and at appropriate densities for households of all income levels.
5. A transportation plan indicating future needs for local street and road systems, parking facilities and highways.
6. A map illustrating how the municipality relates to adjoining municipalities and how the development in one township corresponds to others.

Preparing a comprehensive plan requires considerable data collection and analysis with respect to development patterns, soil conditions, environmental factors, water availability, traffic, population growth, government services and similar factors under different land use development alternatives. Once this study is completed, recommended land uses are determined and illustrated on maps. When the comprehensive plan document is completed, it should be officially adopted by resolution after a public hearing.

A comprehensive plan is the most important technical aid a community can develop for constructively dealing with the problems of growth and change. The plan must give full consideration to physical, economic and social conditions and seek to attain the desired goals with minimum financial and social cost.

A comprehensive plan is often incorrectly viewed as a requirement of the Municipalities Planning Code that has to be completed, but has no real relevance. The comprehensive plan should be viewed as a picture of how the community wants to look in the future, as determined by the board of commissioners after public input. The comprehensive plan should provide a vision of the future and allow other ordinances, such as the zoning ordinance and the subdivision and land development ordinance to fill in the gaps and create the mechanisms to reach this desired goal.

Once the comprehensive plan is adopted, the next steps are to prepare a draft zoning ordinance and map and a subdivision and land development ordinance. However, a subdivision and land development ordinance can be enacted immediately without waiting for the plan to be completed. Your solicitor should review both these documents after completion by the planning commission. When the planning commission is satisfied with the ordinances, the planning commission is required to hold public hearings and a recommendation is made to the board of commissioners. The ordinance may be adopted after additional public hearings are held by the board.

The Zoning Ordinance

Zoning is a method of land use control whose basic objective is to attain proper land use. The zoning ordinance specifies the types of activities permitted in various areas of the municipality, such as residential, commercial and agricultural. Chronologically, the zoning ordinance should follow development of the comprehensive plan. As set forth in the Pennsylvania Municipalities Planning Code, the board may enact, amend and repeal zoning ordinances to implement the comprehensive plan.

There are three fundamental rules to consider when preparing a zoning ordinance. First, the zoning ordinance is prepared under the direction of the planning commission, based on a comprehensive development plan for the township. The zoning ordinance and zoning classification should be based on the most accurate information about the municipality's current status and the areas where the most probable future development may occur. Second, the comprehensive plan and the zoning ordinance should be drafted under the guidance of a trained planner. This ensures proper professional planning techniques in the writing of the ordinance and preparation of maps and makes certain the zone classifications conform to the comprehensive plan. The third rule is the zoning ordinance must be consistent with the provisions of the Planning Code.

The Subdivision and Land Development Ordinance

Subdivision regulations govern the division of land into lots. The board may regulate subdivision and land development within the township by enacting a subdivision and land development ordinance. The ordinance requires all plots of land lying within the municipality to be submitted for approval to the governing body prior to development. A plat is the map or plan of a subdivision or land development.

The subdivision regulations should be based on the concept of equal protection of rights for every landowner and every resident. In the interest of equity, developers and those they sell land to must pay their fair share of the direct costs incurred by the subdivision or development. Direct costs of development include on-site sewer systems, water systems, street paving, street lighting, curbing and storm sewers. Through a 1990 amendment to the Planning Code, the state legislature has restricted the levy of impact fees for off-site development to situations where a sophisticated transportation capital improvements plan has been adopted based on a roadway sufficiency study. The levy of tap-in, connection or other similar fees for connection to municipal water and sewer systems is likewise controlled by provisions found in the Municipality Authorities Act and extended by reference to municipally-owned systems.

Subdivision and land development regulations do not, by their mere existence, assure careful designs for subdivisions or lots. Design standards must be developed very carefully and with an eye toward the intended goal. A number of places across the state have developed alternative standards that result in styles of development radically different from the prevalent suburban pattern. Commissioners have serious decisions to make which affects how the community looks and functions for decades to come. Through careful formulation of a subdivision ordinance, a community can maintain quality standards for improvements, coordinate private development with public facilities and create a pattern for the development of the area into a community where residents will be happy to live.

Floodplain Regulations

Floodplain regulations are adopted by municipalities to manage, avoid or minimize the damage caused by floods. These regulations are found in zoning ordinances, building codes, subdivision regulations, single-purpose floodplain management ordinances and health regulations.

Federal and state laws require officially identified flood prone municipalities to adopt floodplain regulations. When adopting floodplain regulations, municipalities must address minimum standards for the 100-year floodplain established both by the National Flood Insurance Program Act and the Pennsylvania Flood Plain Management Act. Municipalities wishing to adopt regulations exceeding these standards may do so. The Department of Community and Economic Development provides information and assistance on preparation, adoption and administration of floodplain regulations necessary under both laws, as well as information on the National Flood Insurance Program (NFIP).

The NFIP provides for flood insurance coverage of buildings and their contents within municipalities participating in it. Municipalities not participating in the program are denied federal financial assistance, including disaster assistance for acquisition and construction activities within identified flood hazard areas. Lending institutions are required to notify the borrowers of any possible flood hazards and whether or not federal disaster relief will be available in the event of a flood.

The management of flood plains can be made easier in undeveloped sections of townships by including flood plains in the land development and subdivision ordinance and by requiring special treatment for flood plains in much the same manner as wetlands. If no additional development occurs in the flood plain, problems related to flooding will not increase in severity. By allowing the flood plain to flood, downstream damage is generally lessened. Many communities plan areas along rivers, creeks and even stormwater drainage areas to become linear greenways to connect different neighborhoods, parks and open space areas, to create conservation areas and to provide for future development of hiking or biking trails. Flood plain management can be used to further positive development goals of the township.

The Flood Plain Management Act encourages flood plain management by requiring participation in the NFIP.³ While the Act allows municipalities to adopt flood plain regulations exceeding minimum flood insurance program standards, the Act requires municipalities to give special consideration to certain obstructions posing special hazards in flood plains. The Act also authorizes the Department of Community and Economic Development to provide both technical and financial assistance to help municipalities administer local flood plain regulations. In addition, the Department is to oversee the coordination of local flood plain management regulations among municipalities and assure their uniform enforcement. The Department of Environmental Protection is authorized to regulate those obstructions in flood plains that cannot be regulated by the municipalities.

Stormwater Management

The Storm Water Management Act encourages the local administration and management of accelerated stormwater runoff resulting from land development.⁴ Under the Act, counties develop stormwater management plans for specific watersheds. The county plan must then be submitted to the Department of Environmental Protection for approval. Once approved by the Department, municipalities must adopt or amend resolutions, codes, subdivision regulations, zoning ordinances and any other necessary ordinances to regulate development in a manner consistent with the county plan for that watershed.

Stormwater regulations and planning are a vital component of township ordinances that guide and regulate growth. Plans and regulations should be in effect in each township even if the county has not yet prepared its watershed plan. Stormwater regulations, like flood plain regulations, should include a planning element going beyond simple restrictions. The combination of regulations affecting flood plains, stormwater and land use should follow the comprehensive plan and become a tool to guide the township toward a future where stream ways contribute to the local quality of life.

An active stormwater management plan will result in the construction of a number of stormwater retention or detention areas. Strict regulations are needed to assure these do not become a liability to the township. The stormwater management plan should permit and encourage joint facilities for nearby developments and perhaps

with the township itself. It should provide for construction standards minimizing the negative aspects of basins, require a maintenance plan for stormwater facilities, clearly spelling out the responsibility and the means to implement it and tie in with other ordinances for an overall approach to managing the flow of water.

Many townships assume the responsibility for maintenance of facilities serving an entire area. When these facilities are properly constructed, a cash payment into a stormwater maintenance fund assures that perpetual maintenance is not be a burden to the taxpayer. These retention areas are often “wet,” meaning that they contain a pond during dry periods. Often they are planted with an eye towards both beauty and natural habitat and are used as conservation areas where no attempt is made to keep open areas mowed, as in a park. Stormwater management facilities need not be a series of unsightly depressions that detract from the community.

Sewage Enforcement

The Pennsylvania Sewage Facilities Act provides for planning and regulating both community and individual sewage disposal systems.⁵ It requires municipalities to submit plans for sewage systems and requires permits for the installation of all sewage systems. These plans are usually called “537 Plans” after Act 537, the Sewage Facilities Act that details the requirements for these plans. The Department of Environmental Protection administers Act 537.

In addition to implementing state regulations, municipalities can adopt and administer their own regulations relating to sewage facilities, as long as they do not conflict with the Pennsylvania Sewage Facilities Act.⁶ Local zoning ordinances dealing with sewage and sewers are not preempted by the Sewage Facilities Act where local legislation is consistent with the terms of the Act. The General Assembly’s intent is to combine state and local power into a comprehensive regulatory scheme for sewage disposal.⁷

As part of the planning process, townships have the responsibility to review and submit sewage modules to the Department of Environmental Protection on behalf of anyone developing a property or creating a new lot. The developer actually prepares the form, but the township must review the information in each module for conformity with its “537 Plan” and inform the Department of whether or not the module conforms. The township has to look at whether or not the property should be served by an individual or a community system. If a community system, then whether or not there is capacity in the treatment plant and connecting lines; and if the development conforms to other township ordinances. The sewage module must be given approval by the Department before the land development or subdivision can be approved by the township.

Solid Waste Management

A service that is becoming more prevalent in townships is solid waste collection and disposal. Increasing environmental concern and higher costs associated with government regulation have brought more townships into the business of solid waste management. Solid waste collection services differ greatly among townships. Small townships often have no policy or program for collection or disposal. Large townships may license haulers, contract with one or more private haulers to collect garbage or even provide garbage collection using township employees and equipment.

The Solid Waste Management Act requires municipalities with a population density of 300 or more persons per square mile, or areas which have been identified by the Department of Environmental Protection as having a waste problem or a potential waste problem to submit plans for solid waste management and revisions to the plan as deemed necessary or required by the Department. A borough may request the county in which it is located to perform this function on its behalf. It establishes rules, regulations, standards, procedures and a permit system for the operation of solid waste processing or disposal systems.

In 1988, the Pennsylvania General Assembly enacted the Municipal Waste Planning, Recycling and Waste Reduction Act, Act 101.⁸ This law requires larger municipalities to implement a local recycling program. Recycling programs are voluntary for municipalities under 5,000 in population. Each larger municipality must enact its own recycling ordinance. The local ordinance must designate at least three materials that residents are required to separate and store until collection. Leaf wastes must also be separated from the waste stream. In addition, Act 101 requires each municipality to develop and implement a comprehensive public information program on recycling and waste reduction.

The First Class Township Code gives township commissioners power to regulate and control collection, removal and disposal of solid waste. The township may establish fees and charges for garbage collection, but the charges must be reasonable. Township garbage fees that are more than twice the cost of collection by a private hauler are held to be unreasonable.⁹ Courts have held that townships may impose reasonable regulations and zoning ordinances governing sanitary landfills that are not inconsistent with the Solid Waste Management Act.¹⁰ Although the Act protects hazardous waste facilities from local prohibition, townships can adopt reasonable regulations to protect the health and safety of residents.¹¹ A court determined that sewage sludge from a composting facility is refuse and could be regulated by the township.¹²

Municipalities, however, may not regulate solid waste disposal or landfill operations, since these are governed by state regulations.¹³ Townships have the power to regulate and license junkyards and to declare certain activities to be nuisances, including the storage of junked vehicles when they constitute nuisances based on actual conditions.¹⁴

Historic Districts

The Historic Districts Act permits municipalities to designate certain areas as historic districts subject to special controls.¹⁵ The boundaries of the district are defined by surveys of local architectural and historic resources. Controls cover demolition or alteration of existing buildings and new construction within the district. Regulations on building spacing, texture and type of materials and architectural details are intended to preserve the exterior appearance of the district. The degree of controls enacted and their ongoing administration are local choices.

Historic district controls protect the local architectural and historic heritage of the community. Functioning historic districts can stabilize or even increase property values, encourage tourism, foster an increase in civic pride and contribute to the quality of life in the community.

Agricultural Reserves

The Agricultural Area Security Law authorizes local governing bodies to create agricultural areas composed of at least 250 acres of viable agricultural land.¹⁶ Land within a designated agricultural area is given protection from local ordinances which would restrict normal farming operations, as well as safeguards against condemnation by state and local agencies and public utilities. Creation of such an agricultural security area restricts the ability of the township government to acquire land within the agricultural area for sewer lines, parks, roads or similar public improvements. Any agricultural security areas should be created in concert with the township's comprehensive plan so that conflicts can be kept to a minimum and township plans can be realized. Creation of an agricultural area requires a proposal from one or more landowners, review by the township planning commission and a special agricultural area advisory committee and a public hearing before the governing body.

County governments are authorized to purchase development rights within these agricultural areas using funds made available by a state bond issue approved by the voters for this purpose. Purchase of development rights

allows the property to remain in private ownership, but without the ability to develop the land. The object is to protect prime agricultural land from development pressures. There are also conservancies and land trusts in various sections of the Commonwealth which also acquire development rights and even land in order to save sensitive areas such as wetlands, unusual topographic features or habitat for rare animals, plants or birds. The combined effect of agricultural security areas, county purchase of development rights and activities of conservancies can have a dramatic impact on an area.

References

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2. *Board of Supervisors of West Marlborough Township v. Fiechter*, 566 A. 2d 370, 129 Pa.Cmwlt. 537, 1989.
3. 32 P.S. 679.101; Flood Plain Management Act.
4. 32 P.S. 680.1; Storm Water Management Act.
5. 35 P.S. 750.1; Pennsylvania Sewage Facilities Act.
6. *Holland Enterprises, Inc. v. Joka*, 438 A.2d 1048, 64 Pa.Cmwlt. 129, at 133, 1982.
7. *Council of Middletown Township v. Benham*, 523 A.2d 311, 514 Pa. 176, 1987; *Palmer v. Board of Supervisors of Upper Mount Bethel Township*, 615 A.2d 938, 150 Pa.Cmwlt. 323, 1992.
8. 53 P.S. 4000.101,4000.1501; Municipal Waste Planning, Recycling and Waste Reduction Act; 1988 P.L. 566, No. 101.
9. 53 P.S. 56527; First Class Township Code, Section 1502(XXVII); *Ridley Arms, Inc. v. Ridley Township*, 531 A.2d 414, 515 Pa. 542, 1987.
10. *Kavanagh v. London Grove Township*, 404 A.2d 388, 486 Pa. 133, at 138, 1979; *Dougherty v. Messner*, 172 A.2d 288, 404 Pa. 235, at 237, 1961; *Lutz v. Armour*, 151 A.2d 108, 395 Pa. 576, 1959; *Kuhl v. Board of Supervisors of Greene Township*, 11 D.&C.4th 568, 1991.
11. *Sunny Farms, Ltd. v. North Codorus Township*, 474 A.2d 56, 81 Pa.Cmwlt. 371, at 376, 1984.
12. *Hunlock Township v. Hunlock Sand and Gravel Corporation*, 601 A.2d 1305, 144 Pa.Cmwlt. 499, 1992.
13. *Monroeville v. Chambers Development Corporation*,489 A.2d 297, 88 Pa.Cmwlt. 603, at 609, 1985.
14. 53 P.S. 56526, 56543; First Class Township Code, Sections 1502(XXVI), 1502(XLIII); *Bradley v. South Londonderry Township*, 440 A.2d 665, 64 Pa.Cmwlt. 395, at 403, 1982; *Price v. Smith*, 207 A.2d 887, 416 Pa. 560, 1965; *Teal v. Township of Haverford*, 578 A.2d 80, 134 Pa.Cmwlt. 157, 1990, appeal denied 593 A.2d 429, 527 Pa. 659; *Commonwealth v. Corliss*, 13 D.C.4th 291, 1992.
15. 53 P.S. 8002; 1961 P.L. 282, No. 167.
16. 3 P.S. 901.

Glossary of Terms

The following glossary contains a number of terms which often arise in the administration of specialized municipal programs. The glossary, although not all inclusive, does contain terms often used by financial, planning, legal and technical specialists in their dealings with a municipal official.

Administrative. Pertaining to management of functions and activities, as opposed to legislative and judicial.

Agency and Trust Funds. Such funds are established to account for cash and other assets held by a municipality as agent or trustee for another party. The two classes of funds are similar because the resources of the funds are not assets of the municipality but, through the operation of law or by agreement, the municipality is responsible for their accountability. An example of the agency fund is the Firemen's Relief Fund whose assets are received with the purpose of being paid to the Firemen's Relief Association. The Police Pension Fund, administered by the municipality, is an example of a trust fund.

Agenda. A list of items to be brought up at a meeting.

Allocation of Funds. To set aside funds for a specific purpose or program.

Amendment. An alteration, addition or deletion which changes the meaning or scope of an original formal document. Often these are laws or regulations. However plans or specifications can also be amended.

Appropriation. A sum of money authorized by a legislative body to be spent for a certain purpose.

Assessment. The value placed on an item of real or personal property for property tax purposes. The rate of tax times the value equals the amount of charge levied on the property. Also, a special charge levied on each property within a special assessment district for an improvement benefitting the property or for a service provided only within the district.

Audit. An examination of the financial activities of an agency and the report based on such examination.

Bond. A document issued by a municipality in exchange for money promising to pay back the money to the person who holds the document on a specific date. Bonds normally bear interest. They are a common way of raising money for capital improvements.

Budget. A plan, together with related explanation, for spending and receiving money to sustain municipal operations during a fiscal year. A capital budget is such a plan for financing purchase or construction of items of high cost and long life, such as fire engines, streets and buildings.

Capital Outlay. Expenditures made to acquire fixed assets or additions to them are called capital outlays. These expenditures are recorded in the general fund or utility funds where the assets are to be used. Ultimately, under good property accounting, such assets acquired through the general fund should be reflected in the general fixed assets group of accounts.

Capital Program or Capital Budget. A schedule of purchase or construction of items of high cost, such as fire engines, streets and buildings, over a period of years (normally five) together with a plan for spending and receiving the money to pay for the items.

Capital Reserve Fund. Established to account for resources legally set aside for anticipated capital expenditures, including construction, purchase or replacement of, or additions to municipal buildings, equipment, machinery, motor vehicles or other capital assets.

Certification. A formal, written declaration by the authorized officer that certain facts are true or valid.

Charter. A document setting forth the purposes, powers and organization of a municipality, as approved by the voters.

Cluster Development. A type of residential development where the overall density conforms to typical standards, but allows for the concentration of structures on a portion of the tract while leaving the remaining open space for common resident usage. This type of development should be sympathetic to environmental conservation and protection.

Comprehensive Plan. A comprehensive plan (or community development plan) consists of maps, charts and text, and indicates the recommendations of the planning commission for the continuing development of the municipality. The comprehensive plan includes, but is not limited to, the following related basic elements: a statement of objectives, a plan for land use, a map or statement indicating the relationship of the municipality and its proposed development to the adjacent municipalities and areas.

Conditional Use. A use which is not appropriate to a particular zone district as a whole, but may be suitable in certain localities within the district only when specific conditions and factors prescribed for such cases within the zoning ordinance are present. Conditional uses are allowed or denied by the municipal governing body after recommendations by the planning agency.

Constituent. A person served by an elected official, normally a resident or voter.

Council. The governing body of a city, borough and certain home rule municipalities.

Debt Service. Payments to creditors, primarily the holders of municipal bonds. Debt service includes principal, interest and minor incidentals such as paying agents' fees.

Developer. Any landowner, agent of such landowner or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

Development Plan. The provisions for the development of a tract of land, including a subdivision plat, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities.

Easement. A right-of-way for public or quasi- public use. Normally, they are used for public utilities, bridle paths, parkways, floodways, scenic uses and other purposes. The fee title to land in the easement areas remains tied to the adjacent land and the easement rights are relinquished when the public or quasi-public use ceases.

Effluent. A term applied to the water discharged from a sewage treatment device.

Eminent Domain. The concept of the power of certain governmental entities to acquire, for public use, privately owned real estate by means of legal processes and adjudicated compensation to the private owner.

Executive. The power to carry out laws and functions, veto legislation, appoint officers and perform other duties as prescribed by law. If a municipality has a manager, the administrative portion of the executive function is the responsibility of the manager.

Executive Session. A meeting closed to the public. They can legally be held only for certain limited purposes.

Feasibility Study. A preliminary survey to determine the design, aesthetics, construction and economic aspects of a proposed project.

Flood Plain. The area along a natural watercourse subject to periodic overflow by water.

General Fund. Used to account for all revenues and the activities financed by them, not accounted for in some special fund.

General Obligation Bonds. A financial instrument giving borrowing power to a municipality, based upon pledging of taxing power to retire debt and pay interest.

General Obligation Bond Funds. Established to account for the proceeds from bond sales and other revenues properly allocated to these funds and the costs of projects financed by them. Costs for public improvements are recovered from general revenues.

Governing Body. The council in cities and boroughs, the board of commissioners in first class townships, the board of supervisors in second class townships and the elected representative body in a home rule municipality.

Highway Aid Fund. As provided by law, this fund is created to account for the receipt and use of state liquid fuels funds and is subject to the regulations of the Department of Transportation.

Home Rule. The degree of local municipal power exercised by a municipality following a referendum greater than the powers set forth in general law. A municipality under a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania or by the General Assembly.

Improvements. Those physical changes to the land necessary to produce usable and desirable lots from raw acreage including, but not limited to, grading, paving, curbs, gutters, storm sewers and drains, improvements to existing watercourses, sidewalks, crosswalks, street signs, monuments, water supply facilities and sewage disposal facilities.

Industrial Park. A planned area for manufacturing or warehousing uses where special consideration has been given to human and aesthetic values, such as vegetation, open space and buffer zones. Similar areas are developed for office and research parks.

Job Description. An outline of the duties assigned a class of personnel positions together with the training and experience normally required to qualify for the class.

Judicial. The power to judge, to administer justice and interpret laws and ordinances.

Land Development. The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more buildings or the division or allocation of land or space between or among two or more existing or prospective occupants to include streets, common areas, leaseholds, condominiums, building groups or other features; a subdivision of land.

Legislative. Pertaining to the power to make laws as opposed to administrative, executive and judicial.

Manager. The chief administrator of a municipality appointed by the council or board to run its business and suggest and carry out policies and programs.

Mayor. In boroughs, an elected official of borough government who represents the borough at certain official and ceremonial functions, and who supervises the police department under the Borough Code. In cities, the chief elected officer.

Meeting. A gathering of elected officials set or called in accordance with prescribed laws or charter provisions and where business may be transacted.

Mill. A property tax equal to one dollar of tax per one thousand dollars of assessment.

Nonconforming Use. A use, whether of land or of structure, not complying with the applicable use provisions in a zoning ordinance or amendment as enacted, where such use was lawfully in existence prior to the enactment of the ordinance or amendment or prior to its application to the location.

Nonconforming Structure. A structure or part of a structure manifestly not designed to comply with the applicable use provisions in a zoning ordinance or amendment as enacted, where the structure lawfully existed

prior to the enactment of the ordinance or amendment. Such nonconforming structures include, but are not limited to nonconforming signs.

Official. A person who occupies a municipal legislative, quasi-judicial, administrative, executive or enforcement position.

Ordinance. A law or statute enacted by a municipality. See resolution.

Personnel System. A method of recruiting, selecting and promoting people to perform the work of a municipal organization and the method of classifying and assigning a pay scale to their jobs together with related personnel regulations and activities concerning hours of work, training, grievance procedures and labor relations.

Planned Residential Development (Planned Unit Development). An extension of cluster development including detached, semi-detached, attached and multi-story structures, and may include land uses other than residential to the extent they are designed to serve the residents.

Planning. A process of deciding what is to be done and how it is to be accomplished; the process of deciding how land should be used and where public facilities should be located.

Planning Commission. A planning agency, authorized by law to prepare and recommend plans for the development of physical, social, economic and cultural resources and facilities within a political subdivision.

Plat. The official map of a subdivision of land.

Public Hearing. A meeting or portion of a meeting set up to give members of the public a chance to speak on a particular subject such as the provisions of a proposed ordinance.

Referendum. A vote by the people of a municipality or area on an issue. A referendum may be started by a governing body or initiated by petition.

Regulation. A rule, procedure or other formal requirement passed to carry out the purpose of a law. It carries the same legal power as the law. However, the rule or formal requirement may only be used to carry out the purpose of the law under which it is passed.

Revenue Bonds. A borrowing tool with higher interest rates than general obligation bonds, but does not need voter approval. Repayment of the bonds is guaranteed by revenue generated by the project and not municipal taxing power.

Resolution. A decision, opinion or directive of a municipality expressed in a formally drafted document but not having the force or effect of law.

Revisions. Written or added changes, corrections or improvements to a plan, specification or drawing.

Revolving Funds. Special purpose funds providing a constant source of funds for assessable public improvements. General obligation bonds, repayable from general revenues, as well as assessed taxes, may be used as sources for establishing such a fund.

Right-of-Way. Any area reserved by law or by common consent to a public or semipublic use. Streets and easements are typical examples.

Scenic Easement. An easement for the protection of the environment or of scenic values. On this easement, the landowner is not permitted to alter the vegetation or change the use of the land without governmental consent.

Shop Drawings. Additional drawings prepared by the contractor or supplier of materials after the contract has been awarded.

Sinking Fund. Established to account for the accumulation of money providing for the retirement of bonds and the payment of interest.

Soil Percolation Test. A field test conducted to determine the absorption capacity of soil to a specified depth in a given location for the purpose of determining suitability of soil for on-site sewage disposal.

Special Assessment Bonds. Similar to general obligation bond funds, however, the cost of public improvements provided by the bond proceeds are assessed against owners of properties benefitted by the improvements.

Special Exception. The granting of a modification of the provisions of a zoning ordinance as authorized in specific instances listed, and under the terms, procedures and conditions prescribed in the specific ordinance. Special exceptions are administered by the zoning hearing board.

Special Revenue Funds. These funds are established to account for revenues specifically raised for a particular purpose. A special fund is usually created for each purpose (fire tax fund, library tax fund).

Specifications. The written instructions which accompany and supplement the drawings in a contract.

Subdivision. The division of a single tract or other parcel of land into two or more lots. (Specific definitions will vary in specific ordinances or regulations.)

Subdivision and Land Development Regulations. Procedures and requirements which must be met before the subdivision or development of land is permitted.

Temporary Funds. Created to accommodate a specific need that may arise. Must include a system for complete accountability and be closed promptly upon completion of its purpose. Remaining assets should be distributed in accordance with the intentions of the elected officials as set forth at the time the fund was created.

Utility Funds. These funds account for the financial transactions of utility services rendered to the general public financed by specific user charges (water fund, electric fund, sewer fund).

Variance. The permission granted by the zoning hearing board, following a public hearing, for an adjustment to some regulation in a zoning ordinance to alleviate an unnecessary hardship. The permission granted must not be contrary to the public interest and must maintain the spirit and original intent of the ordinance.

Zoning. The restrictions of certain land areas for specific uses and the control of these uses by legal restrictions.

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