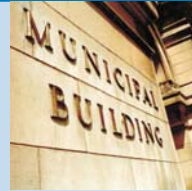




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# Township Supervisors Handbook



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# Township Supervisors Handbook

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# I. The Supervisor and Township Government

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Townships governed by elected boards of supervisors are the most common form of municipal government in Pennsylvania. The 1,456 townships of the second class represent 56 percent of all general purpose municipal governments in Pennsylvania. The state's township supervisors govern a combined population of 5.1 million, representing 41.7 percent of the state total, more than any other municipal classification.

Although some second class townships are located in urban areas and have dense populations, most are rural in nature and have low population densities. Many second class townships are small, rural communities; about 19 percent of the total have populations exceeding 5,000 persons.

## Second Class Townships by Population Size 2000 Census

<u>Population</u>	<u>Number</u>
20,000 and over	23
15,000-19,999	25
10,000-14,999	54
5,000-9,999	172
2,500-4,999	312
1,000-2,499	510
under 1,000	361

The largest second class townships are Bensalem (*Bucks County*) 58,434, Millcreek (*Erie*) 52,129, Lower Paxton (*Dauphin*) 44,424, Middletown (*Bucks*) 44,141 and Hempfield (*Westmoreland*) 40,721. Thirteen townships have populations under 100. The smallest are East Keating (*Clinton*) 24, West Keating (*Clinton*) 42, Cold Spring (*Lebanon*) 49, Elk (*Tioga*) 51 and Grugan (*Clinton*) 52.

Townships were the original subdivisions of counties in Pennsylvania. Cities and boroughs were formed from land originally included within a township. There are an average of 22 second class townships per county. The number ranges from five in Cameron County to 56 in Chester County.

## 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 hundreds. As soon as the first counties were created in 1682, they were subdivided into districts for various governmental purposes. At least two dozen townships formed in the late 1600s still survive in southeastern Pennsylvania, the oldest being Chester, Haverford and Lower Chichester in Delaware County, formed in 1682. As settlement 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, antedating 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, subdividing the county for purposes of road maintenance, administering poor relief, conducting elections and collecting taxes. In 1803, the General Assembly regularized this process in a statute authorizing 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 court. The first general township law was enacted in 1834. 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. Until 1912, property owners could discharge their township tax liability by working on the roads personally.

The first 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. About 10 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 codes for first class townships were enacted in 1931 and for second class townships in 1933. The Second Class Township Code was reenacted in 1947 and again in 1995, and is amended nearly every session of the General Assembly.

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 in 1937. Similar protection was long sought by second class townships, but was not finally achieved until after the 1968 amendments to the state constitution. New townships were created by the division of existing townships until 1931. Since that time, the only method of forming a new township has been through the abandonment of a borough charter.

With the rapid urbanization of Pennsylvania between the end of the Civil War and World War I, townships were eclipsed as both economic and political activity became concentrated in rapidly growing cities and boroughs. With the widespread use of the automobile in the 1920s, both population and economic activity began dispersing out of the old urban centers, with the trend accelerating since the end of World War II. Townships again enjoyed a growing proportion of the state's population and wealth. Township government has emerged as an equal to other municipal classifications. This was recognized in the 1968 constitutional amendments when they were included within the definition of municipality. In recent years, powers of township governments have been expanded to equal those of other classifications, and all classifications are now included in new uniform laws defining the powers and responsibilities of municipal officials.

## **Role of Municipal Government**

The municipality is the focus of governmental legitimacy on the local level. Municipalities are given power and acknowledge 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 which 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 on behalf of society.

Municipal government provides the only authentic organized voice for a 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 the outside world. This includes state and federal administrative agencies, as well as in the state legislature and Congress. A rapidly growing role is in economic development where the municipal government represents community interests in encouraging or seeking employment-generating economic activities.

The municipality provides important community services which are unsuited to private enterprise. Municipalities have traditionally been heavily involved in 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. Municipalities 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 regulation of the quality of life within the community. It can promulgate health and safety regulations to protect citizens and often has a role in enforcing state regulations in this field. The municipality can influence aesthetic factors and amenities which contribute much to the quality of life. This can be done by removal of nuisances, control of noxious activities, 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 also can be 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 Supervisors**

The board of supervisors plays the central role in township government. Article 15 of the Second Class Township Code places general supervision of the affairs of the township in the hands of the board of supervisors. Supervisors 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 also performs executive functions such as formulating the budget, enforcing ordinances, approving expenditures and hiring employees. Although some townships have hired managers, and most use the township secretary for general administrative purposes, in many townships supervisors play a large role in administrative activities, overseeing the day-to-day operation of township government. Because the Code allows supervisors to also be employed by the township, many supervisors spend a significant amount of their time working on the township roads, performing the duties of secretary or treasurer or other authorized duties.

Because of the supervisor's elected status, an individual in that position is often looked to as a community leader. Certainly supervisors are the proper recipients of complaints, ideas and suggestions concerning township affairs. In many cases, the supervisor is called upon to perform as a problem solver, acting as an agent for township citizens with outside agencies or private firms. The supervisor 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 must be made by elected officials.

The extent of any one supervisor's activities in these roles will be 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 supervisor'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**

The Code contains few organizational details and allows wide flexibility in defining the operating departments of the township. Small townships may have no formal department structure or may have only a department of roads or public works. Large townships will have separate departments for functions such as parks and recreation, police, finance, water or others. The number of departments and their respective functions is based on local needs, and this determination is one of the concerns of a supervisor.



Fewer than 160 townships in Pennsylvania have managers, so often the board of supervisors or the township secretary supervise the operating departments. Because many township supervisors are also employed by the township as roadmasters, road superintendents or as secretary-treasurer, they also have important administrative responsibilities over township departments.

Other elected township officials include the three auditors, the tax collector and, in some townships, an assessor. Although elected from a township, the constable is an independent county officer and does not form part of township government. Assessors are elected only in townships within the 51 fourth through eighth class counties and 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 elected auditors conduct the annual audit of township finances, except when an independent certified public accountant has been appointed. The auditors also set the compensation of supervisors that are employed by the township.

The tax collector collects school, county and township real estate taxes. Tax collectors also collect certain special township assessments. In addition, they can be appointed to collect taxes levied under the authority of the Local Tax Enabling Act.

Every township has an appointed secretary and treasurer. These two offices were combined until 1981 and still may be combined if the board chooses. The secretary and treasurer may be a supervisor, a township employee or, in the case of treasurer, a financial institution.

Officers that also may be appointed include the solicitor and the engineer, whose duties are outlined in the Code. Almost all townships have solicitors. The solicitor has control of the legal matters of the township including bonds, real estate transactions, review of ordinances and actions in court. About half the townships have engineers. The engineer does engineering for township work on roads and other public works. The engineer also prepares plans, specifications and estimates for work to be performed under contract.

Certain offices, such as manager or police chief, may be created by township ordinance. Other state laws authorize the appointment of officers such as the sewage enforcement officer, emergency management coordinator, earned income tax officer and zoning officer. These positions may be held by township employees or independent contractors.

## II. Office of Township Supervisor

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Second class townships are governed by 3-or 5-member boards of township supervisors. Responding to demands for additional representation in large townships, the legislature in 1961 authorized the expansion of boards from 3 to 5 members in townships over 10,000 population upon petition to the county court. The population requirement was reduced to 3,000 in 1974 and removed entirely in 1977. In 1975 the procedure was changed to require approval by the voters of the township in a referendum.

A referendum to expand the board of supervisors to 5 members may be initiated by a petition signed by at least 5 percent of the registered voters of the township, or by a resolution adopted by the board of supervisors.<sup>1</sup> The referendum petition or resolution must be filed with the county board of elections at least 13 weeks before the next municipal or general election. This question can only appear on the ballot in a November election. The proposal must be approved by a majority of those voting on the question to be adopted. In 2005, 206 townships operating under the Second Class Township Code had 5-member boards of supervisors. In addition, 5 townships with optional plans and 14 with home rule charters had five member boards.

In townships with 5 supervisors, a referendum to reduce the board from 5 to 3 members may be initiated by a petition signed by 5 percent of the registered voters of the township or by a resolution of the board of supervisors. The change must be approved by a majority of those voting on the question at the next November election. If the voters approve reducing the size of the board, 3 supervisors are elected at the next municipal election for terms of 6, 4 and 2 years.

### Qualifications

To serve as a township supervisor, an individual must be a resident and registered voter of the township and must have resided in the township continuously for at least one year before their election.<sup>2</sup> To qualify as a voter, a person must be 18 years of age and a resident of the election district. To continue serving as a supervisor, an individual must retain residence within the township. 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.<sup>3</sup> Legal residence includes not only a person's intention, but also a physical presence. Intention or voter registration is not enough; an individual must actually physically reside in the township. A person cannot declare a residence inconsistent with the facts of where they actually live.<sup>4</sup>

**Term of Office.** The term of office for a township supervisor is 6 years. Ordinarily, one of a township's 3 supervisor positions will be on the ballot at each municipal election. However, shorter terms may occur. After the voters approve expansion of the board to 5 members or reduction to 3 members, the Code stipulates short terms to achieve the proper staggering of terms. Thereafter, all members are elected for 6-year terms, with 1 or 2 positions on the ballot at each municipal election.

When a vacancy occurs in the office of township supervisor, the office may appear on the ballot as a shorter term.<sup>5</sup> 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 either a two- or four-year term. This provision is intended to retain the original staggering of board members, yet prevent appointees from holding elective office for more than 2 years.

**Incompatible Offices.** A supervisor may hold no other elected township office,<sup>6</sup> nor serve as a school board member,<sup>7</sup> nor hold any elective county office.<sup>8</sup> A supervisor may not serve as township manager,<sup>9</sup> township police officer<sup>10</sup> or zoning officer.<sup>11</sup> A limited number of supervisors can serve as members of the township planning commission,<sup>12</sup> but are prohibited from becoming members of the zoning hearing board.<sup>13</sup>

A supervisor may hold the appointive positions of roadmaster, laborer, secretary, treasurer, assistant secretary, assistant treasurer or in any employee capacity not otherwise prohibited by law.<sup>14</sup> However, supervisors cannot grant themselves additional compensation for performing general administrative duties.<sup>15</sup>

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 that a township supervisor could legally serve on the board of a municipal authority created by the township.<sup>16</sup> 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. 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.<sup>17</sup> 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.<sup>18</sup>

**Oath of Office.** Before entering office, each supervisor, whether elected or appointed, must take an oath of office.<sup>19</sup> The oath can be administered by a judge, district magistrate or notary public. The supervisor 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 supervisor with fidelity. A copy of this oath must be filed with the township secretary before assuming the duties of office.

## Vacancies

The most common reason for vacancies on the board of supervisors is resignation. Individuals sometimes find the demands on their time, the pressure of private business activities, personal health or family problems or the responsibilities of office are too much to cope with. Vacancies can also occur because of death or moving out of the township. The Code provides for the remaining members of the board of supervisors to fill a vacancy by resolution.<sup>20</sup>

A resignation requires acceptance by the governing body before it is effective.<sup>21</sup> Resignations can be rescinded or withdrawn before they are accepted by the governing body. However, once the resignation has been accepted, the vacancy exists. The governing body cannot rescind acceptance of a resignation.<sup>22</sup> Once the resignation is accepted, the office is vacant and must be filled by the appointment of a successor.

The appointment of a new member must be made within 30 days from the date of the vacancy. If the board of supervisors 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 supervisors and 1 registered voter of the township who is appointed by the board and acts as the chairman of the vacancy board. If the vacancy board fails to fill the vacancy within the prescribed time, the chairman then petitions the court of common pleas to fill the vacancy. In the case of a vacancy in the chairmanship, the remaining members of the vacancy board petition the court to fill the vacancy. Where 2 or more vacancies occur on a 3-member board of supervisors, or 3 or more vacancies on a 5-member board, the court fills the vacancies 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. 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 officials.

## Compensation

Compensation authorized for township supervisors falls into 2 categories: compensation as an elected official and compensation as an employee of the township.

As elected officials, supervisors receive a salary as fixed by ordinance.<sup>23</sup> The salary cannot exceed the maximums set for the following population groups, as determined by the latest official census. However, a township is not required to reduce the salaries of supervisors 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

This salary must be established by an ordinance enacted by the board of supervisors and is payable monthly or quarterly. Any change in salary for supervisors as elected officials becomes effective at the beginning of the next term of office. This restriction does not apply to supervisors receiving compensation or benefits as township employees.

When supervisors are employed by the township in any capacity — including secretary, treasurer, or secretary treasurer — their compensation is set by the auditors at a figure comparable to wages in the locality for similar services.<sup>24</sup> The auditors set these wages at their annual reorganization meeting. Before the compensation is set, there should be a common understanding of the range of duties, or better yet, a written job description. Paid leave for supervisors serving as employees, such as vacation or sick leave, also must be set by the auditors.<sup>25</sup>

No supervisor may receive compensation as an employee for attending a meeting of the board of supervisors.<sup>26</sup> Township supervisors that are also employees of the township must be careful to differentiate between their supervisory duties and their duties as an employee when billing for their time. Supervisors may not receive compensation as an employee for performing their elected supervisory duties of office.<sup>27</sup>

**Benefits.** Townships are authorized to provide group insurance benefits for employees covering workers' compensation, health, hospitalization, medical service, accidents and pensions.<sup>28</sup> Supervisors are eligible for inclusion in township group life, health, hospitalization, medical and accident insurance whether or not they are also township employees.<sup>29</sup> However, any decision by the township to pay, in whole or in part, to include supervisors not employed by the township in insurance plans cannot be implemented until the beginning of the next term of that supervisor. Supervisors employed by the township qualify as municipal employees for purposes of unemployment compensation.<sup>30</sup> Supervisors who serve only in the capacity of elected officials and are not employed by the township are not entitled to receive pensions.<sup>31</sup> All supervisors may be covered by the township's liability insurance.

**Expenses.** When travel on official business is authorized by the board, supervisors can receive a mileage fee for use of their personal vehicle. The amount for mileage is to be set by the board of supervisors for all township personnel.<sup>32</sup> When attending meetings, conferences, institutes and schools authorized by the board, a supervisor is entitled to payment of any registration fee, mileage and other actual expenses the board agrees to pay.<sup>33</sup> The mileage fee cannot exceed the current mileage allowance set by the Internal Revenue Service.

The board should set a policy for claiming travel expenses. Allowable expenses should be limited to such items as lodging, meals, parking, tolls and public transportation expenses. Every attendee is required to submit an itemized account of expenses before being reimbursed.

Supervisors are authorized to attend county conventions of township associations. Township supervisors attending such conventions are entitled to payment of the registration fee, mileage or actual transportation expense and all other actual expenses the township board agrees to pay. In addition, each township official is entitled to collect \$35 for each day's attendance at the convention. Township employees, including supervisor-employees, may be paid at their regular rate of pay instead of the \$35 per diem when the county convention occurs during their regular work hours. No supervisor is to be paid for more than 2 days attendance in a year. Each delegate attending the convention must submit an itemized account of expenses before reimbursement is made.<sup>34</sup> The board of supervisors may authorize a supervisor not employed by the township to receive total or partial repayment for lost wages or salary while attending the annual meeting, in which case the supervisor is not entitled to the \$35 per diem, provided sufficient documentation of such wages is presented to the board to justify the reimbursement.<sup>35</sup>

Similarly, township supervisors authorized by the board to attend the annual convention of the Pennsylvania State Association of Township Supervisors are entitled to payment of the registration fee, mileage or actual transportation expense and all other actual expenses the board agreed to pay. Each supervisor attending the convention must submit an itemized account of expenses to the board. The time spent attending the annual convention cannot exceed 4 days, including travel time. The board of supervisors may authorize township employees to be compensated at their regular rate of pay while attending the annual convention.<sup>36</sup> Supervisors, secretaries, treasurers, and managers may serve as delegates to the annual convention. The board of supervisors may authorize a supervisor not employed by the township to receive total or partial repayment for lost wages or salary while attending the annual meeting, provided sufficient documentation of such wages is presented to the board to justify the reimbursement.<sup>37</sup>

## **Conflicts of Interest**

Township supervisors should be very careful to avoid the possibility of conflict between their personal and private interests and their role as public officers. The Public Officials and Employees Ethics Act states the people have a right to be assured the financial interests of public officers do not conflict with the public trust.<sup>38</sup>

In any issue brought before the board of supervisors where an individual member has a conflict of interest, or there is an appearance of a conflict of interest, that supervisor should refrain from voting on the issue. Pennsylvania courts have long upheld as a fundamental public policy principle the rule that members of a governmental body cannot vote on any matter where they have a direct personal interest.<sup>39</sup>

Specific legal prohibitions governing personal interest in contracts and purchases appear both in the Ethics Act and in the Second Class Township Code. Under the Ethics Act, no public official, including a township supervisor, 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.<sup>40</sup>

The Code also prohibits supervisors from having any personal interest in contracts over \$500.<sup>41</sup> In cases where a contract is made with a firm employing a supervisor in a nonmanagement position, the supervisor 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 a supervisor and bidder is remote and there is no evidence of collusion or ulterior motive in awarding a contract.<sup>42</sup>

Any supervisor facing the possibility of a conflict of interest under the Ethics Act may request an advisory opinion from the State Ethics Commission. Alleged violations may be reported to the Commission for further investigation. Any contract, purchase or appointment a township wishes to make where a supervisor 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 at least as important as fulfilling legal requirements.

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](http://www.ethics.state.pa.us)

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

## 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.<sup>43</sup> When the township auditors 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 entered against the official responsible. This is known as a surcharge. The Code contains procedures for the filing and appeal of surcharges. The action of imposing surcharges is civil in nature rather than quasi-criminal, since the function of the surcharge is remedial and not punitive — it is designed to reimburse the government for losses resulting from some misconduct of its officials.<sup>44</sup>

There is a specific provision for surcharge in cases of evasion of advertising requirements in making purchases. Any supervisor who contracts for purchases piecemeal to avoid advertising for a purchase of more than \$10,000 may be subject to a surcharge of 10 percent of the full amount of the contract or purchase.<sup>45</sup>

Limiting surcharges to the amount of actual loss does not apply to cases of fraud or collusion. For such activities, supervisors would also be 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

In 1995, the Pennsylvania Supreme Court struck down all legislative provisions for removal of an elected official for failure to perform the duties of office, and clarified that the only constitutional method for removal of an elected official is contained in Article VI, Section 7 of the Pennsylvania Constitution.<sup>46</sup>

The Pennsylvania Constitution provides that elected officials may only be removed from office if they are convicted of misbehavior in office or of any infamous crime. Elected officials also may be removed for

reasonable cause by the Governor, after impeachment by two-thirds of the Senate.<sup>47</sup> Misbehavior in office is committed when a public official fails to perform a duty of office.<sup>48</sup> However, public officials should not be threatened with dismissal for honest errors in judgment or for mistakes in administration.<sup>49</sup> Violation of Section 3(c) of the State Ethics Law, accepting money in exchange for official favors, is an infamous crime under Article II, Section 7 of the Pennsylvania Constitution.<sup>50</sup>

More recently, the Pennsylvania Supreme Court reaffirmed its 1995 decision in *South Newton Township Electors v. South Newton Township Supervisor, Ronald Bouch* (2002). In South Newton, the Court upheld a lower court decision that found Section 503 of the Second Class Township Code in violation of Article VI, § 7 of the Pennsylvania Constitution.<sup>51</sup>

## 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.<sup>52</sup> Members of the board of supervisors are exempted 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 supervisor for an act or omission claimed to be within the scope of official duties, the township must defend the action when requested by the supervisor. 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 the official's official duties.<sup>53</sup>

## References

1. 53 P.S. 65402; Second Class Township Code, Section 402.
2. 53 P.S. 65401; Second Class Township Code, Section 401.
3. *Commonwealth ex rel. District Attorney v. Champaine*, 17 D.&C.3d 120, at 123, 1980, C.P. Chester Co.
4. *Commonwealth ex rel. Fortney v. Bobrofskie*, 196 A. 489, 329 Pa. 44, at 48, 1938.
5. 53 P.S. 65407; Second Class Township Code, Section 407.
6. 53 P.S. 65403; Second Class Township Code, Section 403.
7. 24 P.S. 3-322; Public School Code, Section 322.
8. 16 P.S. 402(a); County Code, Section 402(a).
9. 53 P.S. 66301(c); Second Class Township Code, Section 1301(c).
10. 53 P.S. 66902; Second Class Township Code, Section 1902.
11. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
12. 53 P.S. 10205; Pennsylvania Municipalities Planning Code, Section 205.
13. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
14. 53 P.S. 65606(a); Second Class Township Code, Section 606(a).
15. *Cotlar v. Warminster Township*, 302 A.2d 859, 8 Pa.Cmwlth. 163, at 166, 1973.
16. *Commonwealth v. Lucas*, 632 A.2d 868, Pa., 1993.
17. *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlth. 686, 1991.
18. *Koslow v. Commonwealth, State Ethics Commission*, 540A.2d 1374, 116 Pa.Cmwlth. 19, appeal denied 533 A.2d 971, 520 Pa. 609.
19. 53 P.S. 65501; Second Class Township Code, Section 501.
20. 53 P.S. 65407; Second Class Township Code, Section 407; *Commonwealth ex rel. Zimmerman v. Kleiman*, 402A.2d 1343, 485 Pa. 421, at 428, 1979; *In re Gianoplos*, 11 D.&C.3d 436, at 438, 1979, C.P. Clinton Co.
21. *Bowen v. Mount Joy Township*, 644 A.2d 818, Pa.Cmwlth., 1994; *Borough of California v. Horner*, 565 A.2d 1250, Pa.Cmwlth., 1989; *Whitehouse v. Krapf*, 94 A. 533, 249 Pa. 81, 1915.
22. *King v. Weiser*, 591 A.2d 770, 140 Pa.Cmwlth. 90, 1991, appeal denied 600 A.2d 541, 529 Pa. 626.
23. 53 P.S. 65606; Second Class Township Code, Section 606.
24. 53 P.S. 65606, 65703, 65803; Second Class Township Code, Section 606, 703 and 803; *In Re: Center Township, Butler County, Pa.*, 41 D.&C.3d 234, 1986; *Yacabet v. State Ethics Commission*, 531 A.2d 536, 109 Pa.Cmwlth. 432, 1987.

25. *In re: Appeal from Hazle Township Audit*, 1952 (No. 2), 51 Luz.Leg.Reg. 207, at 211, 1962.
26. 53 P.S. 65606; Second Class Township Code, Section 606.
27. *R.H. v. State Ethics Commission*, 673 A.2d 1004, Pa. Cmwltl, 1996.
28. 53 P.S. 66512; Second Class Township Code, Section 1512.
29. 53 P.S. 65606(c)(1); Second Class Township Code, Section 606(c)(1).
30. *Lescallet v. Unemployment Compensation Board of Review*, 505 A. 2d 1086, 95 Pa.Cmwltl. 429, 1986.
31. 53 P.S. 65606(b)(1); Second Class Township Code, Section 606(b)(1); *Ross Township v. McDonald*, 431 A.2d 385, 60 Pa. Cmwltl. 306, at 311, 1981.
32. 65 P.S. 371; 1979 P.L. 156, No. 51, as amended.
33. 53 P.S. 65607; Second Class Township Code, Section 607.
34. 53 P.S. 66401; Second Class Township Code, Section 1401.
35. 53 P.S. 66401(3); Second Class Township Code, Section 1401(3).
36. 53 P.S. 66402; Second Class Township Code, Section 1402.
37. 53 P.S. 66402(g)(3); Second Class Township Code, Section 1402(g)(3).
38. 65 Pa.C.S.A. 1101.1; Ethics Standards and Financial Disclosure, Section 1101.1.
39. *Consumers Education and Protective Assn. v. Schwartz*, 432 A.2d 173, 495 Pa. 10, at 17, 1981.
40. 65 Pa.C.S.A. 1103; Ethics Standards and Financial Disclosure, Section 1103.
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42. *Kimmel v. Lower Paxton Township*, 633 A.2d 1271, Pa.Cmwltl., 1993.
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44. *In re: Appeal from Report of Audit of South Union Township for 1975*, 407 A.2d 906, 47 Pa.Cmwltl. 1, at 8, 1979.
45. 53 P.S. 68104; Second Class Township Code, Section 3104.
46. *In re Petition to Recall Reese*, 665 A.2d 1162, 542 Pa. 114, Sup. 1995.
47. Pennsylvania Constitution, Article VI, Section 7.
48. *Com. v. Knox*, 94 A.2d 128, 172 Pa. Super. 510, 1953, affirmed 97 A.2d 782, 374 Pa. 343.
49. *In re Shoaf*, 88 A.2d 871, 370 Pa. 567, 1952.
50. *Corbett v. Desiderio*, 698 A.2d 134, Pa. Cmwltl 1997.
51. *South Newton Township Electors v. South Newton Township Supervisor Ronald Bouch*, 838 A.2d 643, 575 Pa. 670, Sup. 2003.
52. 42 Pa.C.S.A. 8541; Judicial Code, Section 8541.
53. *Lewis Township v. Employers Mutual Casualty Company*, 523 A.2d 719, 514 Pa. 242, 1987.



## III. Legislative Powers

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### 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 governing body. Corporate powers legalize the actions of the municipality and provide elected officials authority to act on behalf of the municipality.<sup>1</sup>

General municipal corporate powers include the right to sue and be sued, 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.<sup>2</sup> The Second Class Township Code invests the corporate power of a township in the board of supervisors.<sup>3</sup>

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 supervisors with the capability needed to take action for the benefit of the municipality and its citizens.

The Code also includes an especially important power — the authorization for the board of supervisors 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.<sup>4</sup> This general grant of power authorizes any legal action on the part of the board of supervisors to maintain the peace, good government and welfare of the township and to protect the health, safety and general welfare of its inhabitants. However, a township may not enact any legislation in conflict with the Constitution and the laws of the Commonwealth.

The courts have held that these general police powers are not unlimited. An exercise of the police power must not be unreasonable, unduly oppressive or beyond the necessities of the case. The means that the township employs must have a real and substantial relation to the objective it seeks to obtain. The township must not invade the fundamental liberties of its citizens. Even legitimate legislative goals cannot be pursued by means which stifle fundamental personal liberty when the goals can be more reasonably achieved in other ways.<sup>5</sup>

### Meetings

The Second Class Township Code requires the board of supervisors to meet at least once a month at a time and place designated by the board.<sup>6</sup> Except for the annual reorganization meeting, the board may meet at any time during the month. The annual reorganization meeting must be held the first Monday in January of each year. When the first Monday is a legal holiday, the reorganization meeting is held the following day. The board's first official business at this meeting is to elect one of its members as chairman and one as vice chairman. While chosen at this meeting, these officers serve at the pleasure of the board and can be replaced at any time.<sup>7</sup>

The Code sets minimum requirements for a quorum to do business at a meeting. A quorum is two members of a three-member board or three members of a five-member board. An affirmative vote of a majority of the entire membership of the board is required to transact any business. The State Ethics Law requires that any supervisor with a conflict of interest must abstain from voting on that particular issue. The Sunshine Law requires that all actions taken by the board must be at a properly advertised public meeting.

Although supervisors are prohibited from voting on any issue where there is a conflict of interest, they sometimes abstain from voting on issues where they have no conflict. Local government is based on the concept of representative democracy. Township supervisors are elected to represent their constituents in making decisions for the community. Supervisors should never refuse to vote simply because a matter is contentious or may cause personal resentments. Supervisors refusing to vote are violating their sworn duty to represent the voters in helping to decide matters before the governing body.

## **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.<sup>8</sup> 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.

The boards of supervisors are required to provide an opportunity for public comments at each advertised regular and special meeting. A 1998 amendment to the Sunshine Law requires the public comment period that must be provided at each meeting to be held before official action is taken. To satisfy this requirement, townships may hold a comment period before each official action or hold the public comment period at the beginning of the meeting before any action is taken.<sup>9</sup> 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 board may impose time limit for the right to speak during this period to residents and taxpayers of the township.

Public notice must be given for all public meetings. Notice of regularly scheduled meetings may be given once a year by advertising in a newspaper of general circulation at least 3 days before the first meeting. Notice must also be posted at the township's principal office. For example, the courts have held that the dismissal of an employee by two members of the board of supervisors was void because the decision was not transacted at a public meeting and proper public notice was not given.<sup>10</sup> For rescheduled or special meetings, notice must be published in a newspaper of general circulation at least 24 hours in advance, plus posting.

Executive sessions, or meetings from which the public is excluded, may be held for a limited number of specific purposes. Executive sessions may be held to discuss 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 to discuss 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 must be limited to situations clearly falling within this list.

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.

Public notice is not required for emergency meetings, but these must still be 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 supervisors are permitted to attend conferences, training programs or seminars to gather information on their responsibilities. These seminars are not required to be open to the public. Although official actions must be conducted in open meetings, the Sunshine Act does not require agency members to inquire, question and learn about agency issues only at an open meeting.<sup>11</sup> The Commonwealth Court held that township supervisors' conduct in setting up and attending a meeting with the water association and county

redevelopment authority was not a violation of the Sunshine Act because the meeting concerned business of the water association and not the township and the supervisors did not enact any law, policy or regulation, create any liability under contract or adjudicate any rights, duties, or responsibilities at that meeting.<sup>12</sup>

For more information regarding provisions of the Sunshine Act, please see another DCED publication entitled *Open Meetings/Open Records: The Sunshine Act and the Right-to-Know Law*, found at [www.newPA.com](http://www.newPA.com).

## Conduct of Meetings

It is certain that at one time or another all supervisors will be called upon to conduct a meeting. Although not the chairman of the board, one may at some time have to conduct a township meeting. In addition, supervisors may find themselves on special subcommittees, or a member of a regional group of municipalities. A supervisor may very well be designated chairperson and will be responsible for the proper conduct of meetings.

The Second 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.<sup>13</sup> Every township probably already has a procedure for its meetings which has been established either by ordinance, resolution or perhaps by tradition.

The wise chairperson will ensure 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 will be too easy for irrelevant 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 will be 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.

The following is an example of a township meeting agenda that, with minor variations, follows the general pattern used by many townships in Pennsylvania.

### MEETING AGENDA

1. *Call to Order* - The chairman of the board calls the meeting to order. A roll call is conducted to determine if a quorum is present.
2. *Pledge of Allegiance* – Many townships recite the pledge at the beginning of every meeting.
3. *Public Participation* – A 1998 amendment to the Sunshine Act requires public participation to take place before any official action. This may take place at the beginning of the meeting or before each agenda item. A time limit is usually placed on an individual's presentation and any resulting discussion.
3. *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 supervisors for their review prior to the meeting. Minutes are reviewed for possible corrections, deletions or additions. It is not necessary to have the minutes read aloud.
4. *Treasurer's Report* - The treasurer gives a report of expenditures and revenues since the prior board meeting. Once again, a typed report mailed to officials prior to the meeting could expedite action on financial matters.
5. *Correspondence* - Letters or verbal communications received by the township since the last meeting should be noted and acted upon.

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. *Old 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 should be 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, supervisors may discuss any appropriate subject or make announcements of importance to other officials or those in attendance.
9. *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 effective and efficient 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. One of the most common misunderstandings concerns the rule that only one main motion can be pending at one time. Although other motions may be applied to the main motion, there can be only one 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 a motion that is secondary to the main motion. If a secondary motion is made, then it must be dealt with before the main motion can be voted on. The several commonly used subsidiary motions are to amend the main motion, limit or extend debate, postpone indefinitely, or table the main motion.

## Minutes and Records

The board of supervisors is required to keep minutes of its proceedings and official actions and other record books the board finds necessary in the performance of its duties.<sup>14</sup> The minutes of township meetings must include the date, time and place of the meeting; the names of the members present; the substance of all official actions; a record of any roll call votes taken by individual board members; and the names of all citizens who appeared officially and the subject of their comments.<sup>15</sup> All minutes, records and books must be open to public inspection by a citizen at a reasonable time. All records, books and minutes must be delivered by the elected officials 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.<sup>16</sup>

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. Supervisors disagreeing with a majority action of the board should make certain their no vote is recorded. A supervisor 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 corrected at the following meeting. Supervisors cannot change their votes after the meeting is adjourned and the vote is recorded.<sup>17</sup>

## **The Legislative Role**

Elected township supervisors serve primarily in a legislative role. They may also act in an administrative, executive or supervisory capacity 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 the borders as well. The formulation of legislative policy involves full and free public discussion of issues, often with a supervisor vigorously acting as advocate for a particular policy approach, or possibly spearheading opposition. Such activity is often a necessary part of the legislative process.

Because the actions of a governing body have a direct impact on a municipality, the methods for taking official action are specified in the Second Class Township Code and other state laws. The Code requires all permanent legislative acts to be made by ordinance.<sup>18</sup> A township ordinance becomes effective only after it has been properly recorded in the township's ordinance book.<sup>19</sup>

An ordinance is defined as a local law of a municipality of a general or permanent nature. In some cases, the Code specifies when an ordinance must be used. If no specific direction is given in the Code, then an ordinance should be used if the matter is of a general or permanent nature.<sup>20</sup> On the other hand, a resolution is considered less formal than an ordinance and used when the matter under discussion is either specific or of a temporary nature, such as awarding contracts.<sup>21</sup>

A motion is a formal method for taking action on any measure under consideration by the governing body, such as an ordinance or resolution. In addition, it is used to finalize decisions on other actions before the board. The adoption of a motion by the required majority of the entire board 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 supervisor's role as a legislator will not be confined to enacting township laws. Elected officials represent the township and will be 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 township or region.

As a representative of the township, supervisors are in a position to exert some influence on the decisions of state legislators. The relationship between supervisors and legislators is more effective if the board takes an official position by adopting a resolution prior to contacting their legislator. The methods of communication with the legislator may vary from the telephone, to an e-mail or letter or personal visit. If the initial contact is verbal, it should be followed with a letter.

Make sure the facts are accurate, precise and brief. Supervisors should not hesitate to contact legislators from districts other than their own, particularly the committee chair 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.<sup>22</sup>

## Quasi-Judicial Role

In addition to the power to deliberate, formulate and enact local legislation and regulations, state law gives township boards of supervisors quasi-judicial powers as a hearing board to hear, interpret local ordinances and decide certain issues. These include hearings on such matters as local personnel actions and various types of applications under the Pennsylvania Municipalities Planning Code.

When the board of supervisors is acting in a quasi-judicial role, a different pattern of behavior is required from when they are taking legislation actions. 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 municipal officials who had actively opposed the proposal before it was brought before the governing body.<sup>23</sup> His actions included speaking in opposition at public hearings on the proposal, 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 municipal official. The court held that due to the municipal official's clear bias and actions against the proposal, allowing him to vote on it was a denial of the applicant's right to a fair hearing.

In 2002, the General Assembly amended the Second Class Township Code to state "A member of the board shall not be disqualified from voting on any issue before the board solely because the member has previously expressed an opinion on the issue in either an official or unofficial capacity."<sup>24</sup>

Despite the new language in the Code, the Commonwealth Court case above continues to underscore the need for supervisors to avoid the appearance of bias in cases where they are acting as a tribunal, performing a role quite different from their role in formulating public policy.

## References

1. 53 P.S. 65601; Second Class Township Code, Section 601.
2. 53 P.S. 66501, 66502; Second Class Township Code, Sections 1501 and 1502.
3. 53 P.S. 66505; Second Class Township Code, Section 1505.
4. 53 P.S. 66506; Second Class Township Code, Section 1606.
5. *Simco Sales Service v. Lower Merion Township*, 394 A.2d 642, 38 Pa.Cmwlth. 434, at 438, 1978; *Commonwealth v. Sterlace*, 354 A.2d 27, 24 Pa.Cmwlth. 62, at 66, 1976.
6. 53 P.S. 65603; Second Class Township Code, Section 603.
7. *Kline v. Fawes*, 51 D.&C.2d 467, at 476, 1970, C.P. Bucks Co.; *Quashnock v. Sigmund*, 85 D.&C. 584, at 585, 1953, C.P. Allegheny Co.; *Commonwealth v. Pape*, 21 Dist. 1123, at 1124, 1912, C.P. Allegheny Co.
8. 65 Pa.C.S.A. 704; 1998 P.L. 729, No. 93, Section 704.
9. 65 Pa.C.S.A. 710.1; 1998 P.L. 729, No. 93, Section 710.1.
10. *Thomas v. Township of Cherry, Butler County*, 722 A.2d 1150, Pa. Cmwlth., 1999.
11. *Sovich v. Shaughnessy*, 705 A.2d 942, 945-946 Pa. Cmwlth., 1998; *Belitskus v. Hamlin Township*, 764 A.2d 669 Pa. Cmwlth., 2000.
12. *Belitskus v. Hamlin Township*, 764 A.2d 669 Pa. Cmwlth., 2000.
13. 65 P.S. 280; 1986 P.L. 388, No. 84, Section 10; *Commonwealth ex rel. Zimmerman v. Kleiman*, 402 A.2d 1343, 485 Pa. 421, at 429, 1979.
14. 53 P.S. 65605; Second Class Township Code, Section 605; 65 P.S. 276; 1986 P.L. 388, No. 84, Section 6.
15. 65 Pa.C.S.A. 706; 1998 P.L. 729, No. 93, Section 706.
16. 53 P.S. 65605(b); Second Class Township Code, Section 605(b).
17. *Penn Wynne*, supra, at 531.
18. 53 P.S. 66601; Second Class Township Code, Section 1601.
19. 53 P.S. 66601; Second Class Township Code, Section 1601; *Cranberry Park Associates v. Cranberry Township Zoning Hearing Board*, 561 Pa. 456, 751 A.2d 165, 2000.
20. *Emert v. Hatfield Township*, 19 D.&C.2d 182, at 185, 1957, Q.S. Montgomery Co.; *Donivan v. Dallastown Borough*, 835 F. 2d 486, 1987.

21. *Penn Wynne v. Lower Merion Township*, 124 A.2d 487, 181 Pa.Super. 524, at 529, 1956; *Sheetz v. Borough of Lansdale*, 438 A.2d 1048, 64 Pa.Cmwlth. 24, at 27, 1982.
22. *In re: Appeal from the Settlement and Audit of the Auditors of Buckingham Township, Bucks Co.*, 460 A.2d 904, 74 Pa.Cmwlth. 614, at 618, 1983.
23. *Prin v. Council of the Municipality of Monroeville*, No. 203, C.D., Pa.Cmwlth., 1993.
24. 53 P.S. 66603; Second Class Township Code, Section 603.

## IV. Administrative and Appointive Powers

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In addition to their task as a legislator in the formation of policy and the enactment of laws, supervisors are also responsible directly or indirectly for the day-to-day operations of the township. In this capacity, they will be acting as an executive and an administrator concerned with law enforcement, preparing an annual budget, suggesting systems of taxation, preparing an annual municipal report, preparing grant applications, appointing members of boards and commissions and contracting for municipal purchases.

Local government is becoming more complex every day. Residents are demanding more services and federal and state governments are placing 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. A number of municipalities have delegated administrative powers to appointed officials. Some municipalities have appointed a manager for this purpose, while many municipalities continue to use the secretary to perform many administrative tasks.

Under the broad scope of administration, you will be involved in many duties that will demand your time. Some examples are:

- Informal meetings with residents to obtain their reactions to township programs and policies.
- Informal meetings with the manager or administrators and township elected officials to discuss specific problems.
- Reading the technical reports of the administrator, engineers, planners and other professionals employed by the township.
- Delivering speeches before civic and interest groups.
- Attending county and state association conferences.
- Making field trips and inspections relating to specific problems or proposals.
- Recruiting candidates and approving appointments to township boards and commissions.
- Reporting the status of local government affairs to residents.

### Appointed Administrator

If the township has appointed a manager or administrator, that person is delegated the responsibility for taking care of the day-to-day business of the township. In many townships, the secretary serves as the township's administrator. It is the supervisor's duty as an elected official to ensure that the performance of the administrator is efficient and effective. Whenever a township has an 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 supervisors while administrative functions for carrying out the decisions of the board are handled by the administrator.

An administrator is appointed by the entire governing body and operates under the directions and official actions of the entire board. Supervisors need to develop a good working relationship because the administrator can be useful as a sounding board for ideas and a source of valuable information. Supervisors should not bypass the administrator and give orders directly to department heads or employees. Supervisors should work through the administrator. Informal meetings should be held with the administrator for the purpose of exchanging ideas and opinions on the issues arising in the township.

The extent of responsibility delegated to an administrator varies from municipality to municipality. The administrator's power can be as restricted or as broad as the governing body determines. A good job description is important to clearly spell out the administrator's duties and responsibilities.



## 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 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 will help to provide the township with qualified applicants, and will also supply 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 should a rejected applicant take issue with the decision either in court or at a public meeting.

Well-designed application forms can 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 help employees attain a high quality of performance on the job. Training programs can include a wide variety of activities and programs such as orientation, on-the-job training, conferences and discussions, apprenticeship, 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. However, the presence of an adequate job classification system can be 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.

Township employees are covered under the federal Fair Labor Standards Act (FLSA). Hourly employees must be paid minimum wages and must be paid overtime if they work more than 40 hours a week. In addition, the law determines who is covered by the overtime provisions, what constitutes work hours and when punitive damages may be levied against the township for noncompliance.<sup>1</sup> Elected officials, including township supervisors employed by the township, are not covered under FLSA. Any overtime pay for working supervisors must be approved by the board of auditors as part of the compensation package.

**Compensation Plan.** The best compensation plans are based on specialized job evaluation systems. For local governments without such systems it may be best to begin developing 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. A useful source for statewide township wage information is the biennial *Wage and Salary Survey* by the Pennsylvania State Association of Township Supervisors.

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 usually 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.<sup>2</sup> 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 with the bargaining unit. 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 join a union.

A separate act covering police officers and paid firefighters authorizes collective bargaining with public employers concerning the terms and conditions of employment, including compensation, hours, working conditions, retirement, pensions and other benefits.<sup>3</sup> The Act provides for arbitration in order to settle disputes and requires compliance with collective bargaining agreements and findings of arbitrators. The Police Tenure Act regulates municipal action for suspension, removal, furlough and reinstatement of police officers, and provides rights of police officers to hearings or appeals in cases of dismissal.<sup>4</sup> It applies to all second class townships.

**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. These laws 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 and they determine the procedure for employees who request a hearing after being terminated. Townships and individual supervisors can be subject to serious penalties for failure to adhere to these laws.

## Appointment Powers

Supervisors are involved in the appointment of individuals to provide a particular expertise to the township, such as the solicitor, secretary, engineer and manager. Other appointed positions include the roadmaster, zoning officer, codes enforcement officer and sewage enforcement officer.

**Solicitor.** One of the most critical appointments is that of municipal solicitor. In smaller townships, this individual is the only source of on-site professional assistance. As in many professions, attorneys have specialties and not every attorney has a working knowledge of municipal law. The complexity of laws which have an impact on township operations make it important to identify an attorney with demonstrated capability and 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. Supervisors 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 supervisors 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 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 board of supervisors 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 positions in a township. State law dictates that each municipality have an emergency management coordinator and an emergency plan. The emergency management coordinator is appointed by the Governor upon the recommendation of the board of supervisors.<sup>5</sup> The coordinator can be an existing employee of the township and, in fact, is often the fire chief or police chief. Since emergencies come in all forms, from toxic material spills to blizzards, the supervisors 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 supervisors to prepare for them. Indecision or poor decisions during an emergency can be costly.

## Boards and Commissions

The successful operation of a municipality is a complex task requiring the time and effort of many people. Many times the elected officials and appointed employees have insufficient time or expertise to personally become involved in every aspect of township government. The Code and other state legislation allow the board to enlist the capabilities of citizens of the municipality through creation of 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 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 boards and commissions serve without pay and their primary reward is the satisfaction derived from helping the people of the township. When a township supervisor has the opportunity to recommend appointments to boards and commissions, such appointments should reflect as many different cross sections 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, it is especially important that the persons appointed have certain personal qualifications such as patience, understanding, courteousness, reasonableness and fairness. You should attempt to tap people who can make unbiased judgments in dealing with township concerns.

**Planning Commission.** Planning commissions or planning departments may be created by townships.<sup>6</sup> At the direction of the board of supervisors, the planning commission may be given the responsibility to prepare a comprehensive plan for the township, to prepare and make recommendations on an official map and 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 and environmental studies and to 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 that concern them. Meanwhile, meetings of the

board of supervisors can remain the forum where decisions are made based on the citizen input received by the planning commission.

**Zoning Hearing Board.** Any township which has enacted a zoning ordinance must appoint a zoning hearing board.<sup>7</sup> The board is established 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.<sup>8</sup> The municipal solicitor may not be the zoning hearing board solicitor since the opinions and decisions of the zoning hearing board may differ from the views of the supervisors. The supervisors may, just as any affected citizen, appeal a decision of the zoning hearing board to the courts.

**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. 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 supervisors may also place the responsibility to equip, operate and maintain recreation facilities on the park and recreation board.<sup>9</sup> Whichever approach is taken, the duties of a park and recreation board should be clearly spelled out by the supervisors so there is no blurring of the advisory and operational roles in the park and recreation programs of the township.

**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.<sup>10</sup> Shade tree commissions have the authority to plant, remove, maintain and protect shade trees on public streets and highways of the township.

**Board of Health.** Townships may appoint a board of health and a health officer to administer and enforce the health and sanitation laws of the township.<sup>11</sup> The board of health consists of five members who serve without compensation. The board may appoint a health officer or inspectors. The health officer and inspectors must be certified by the Department of Environmental Protection and the state Department of Health. The board of health, health officer and inspectors have the power to enter premises where there are suspected health hazards or violations of health or sanitation laws. They may issue orders to abate or correct any hazards or violations found during inspections.

## References

1. 29 U.S.C.. 201 *et seq.*
2. 43 P.S. 1101.101; Public Employe Relations Act.
3. 43 P.S. 217.1; 1968 P.L. 237, No. 111.
4. 53 P.S. 811; 1951 P.L. 586.
5. 35 Pa.C.S.A. 7502; Emergency Management Services Code, Section 7502
6. 53 P.S. 10201; Pennsylvania Municipalities Planning Code, Section 201.
7. 53 P.S. 10901; Pennsylvania Municipalities Planning Code, Section 901.
8. 53 P.S. 10017.3; Pennsylvania Municipalities Planning Code, Section 617.3.
9. 53 P.S. 67204; Second Class Township Code, Section 2204.
10. 53 P.S. 67901; Second Class Township Code, Section 2901.
11. 53 P.S. 68001; Second Class Township Code, Section 3001.

## V. Fiscal Powers

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A significant portion of the management of a township involves raising and spending public money to perform its governmental functions. Members of the board of supervisors are involved in the fiscal management of the township and will be responsible not only for raising the necessary money through taxes, service charges and grants, but also for seeing that municipal funds are spent in accordance with the budget and capital program.

### Taxes

The primary source of revenue for Pennsylvania townships is local taxes. In 2003, taxes provided 43 percent of the revenues of second class townships. The other significant sources of revenue were grants from federal and state agencies, including liquid fuels funds, totaling 13 percent of township revenues and sewer charges providing 7 percent of township revenues. Two chief tax sources provided the majority of tax revenues. The greatest tax yield came from the earned income tax, constituting 21 percent of all revenues, while real estate taxes came in second, contributing 14 percent of revenues.

Real estate taxes are authorized in the Second Class Township Code. The Code authorizes the township supervisors to levy up to fourteen mills for general township purposes.<sup>1</sup> An additional five mills may be levied for general purposes after approval by the court of common pleas.

In addition to the general purpose levy, additional special purpose real estate millages may be levied by the township. They may be used for specific municipal purposes such as a municipal building, fire protection, recreation, debt service, permanent improvement fund, road machinery, libraries, ambulance and rescue squads, fire hydrants and street lights. Some of these special levies carry a maximum millage rate and others are unlimited, but all the revenue from each special levy must be maintained in a separate fund and 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 tax collector. The tax collector also is responsible for collecting assessments for street lighting or fire hydrants where these are levied. The supervisors can establish the manner and schedule for the tax collector to pay over tax receipts to the township. Real estate taxes represent a significant proportion of revenues in many townships. Because of the importance of this tax revenue source, the board of supervisors should establish regulations to assure timely payment by the tax collector. The supervisors also must assure that a township officer, usually the secretary or treasurer, reaches settlement with the tax collector 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 tax collector can be found in the *Tax Collectors Manual* available from the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

Besides the earned income tax, a wide range of nonreal estate taxes may be adopted under the authority of the Local Tax Enabling Act.<sup>2</sup> These include the per capita, realty transfer, amusement, emergency and municipal services (which replaced the occupational privilege tax in 2005) and occupation taxes. In 2003, these minor nonreal estate taxes contributed 6.5% 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.

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 supervisors. While some of these taxes may be assigned to the elected tax collector, it is not required and the tax collector would be acting as an appointed officer and subject to the regulations the township may set for any appointed officer. It is common for the elected tax collector to be assigned 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, also may be used. A collection agency is frequently used to collect the earned income tax (EIT). The EIT is often the largest source of tax revenue for a township and the quality of collection can vary greatly among municipalities. The loss of tax revenue and associated interest can be greatly reduced through efficient collection and prompt deposit into a township account. Realty transfer taxes are always collected by the county recorder of deeds.

More information on the taxes authorized for use by a township can be found in the *Taxation Manual* available from the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

## The Budget

The budget is a plan for receiving and 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 supervisor valuable planning experience and helps assure the fiscal soundness of next year's operation.

Budget forms have been prepared by the Commonwealth with the cooperation of the municipal associations. 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. Township working budgets often break down each program area into line items such as salaries and wages, materials and supplies. Through the program budget the township official is able to compare and judge the reasonableness of expenditures for each function.

A balanced budget must be officially adopted by the township before December 31 of each year.<sup>3</sup> The Second 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 9 months of the year. This authority should not be used as a justification for poor prior planning. But even a carefully prepared budget will need to be changed under certain circumstances. An emergency situation can create 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, including 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, will have little activity.

For more information on working with the budget, you should refer to the *Fiscal Management Handbook* distributed by the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

**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 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 from the source. When recording revenue receipts you would not include the balance carried forward from the previous year, or nonrevenue 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 such items as 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 an orderly manner to avoid last minute panic efforts to adopt a budget before the deadline. The budget calendar is a guide for participation of elected and appointed officials in a time-scheduled adoption of the budget.

A typical budget calendar is illustrated below. You will note specific activities or events leading to the adoption of a budget are identified and the deadline date 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

<b>Due Date</b>	<b>Budget Activity</b>	<b>Responsible Person</b>
September 15	Post current year expenditure and revenue estimates on budget 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 forms	Secretary
November 1-20	Conduct full review of budget	Board of supervisors
November 20-30	Tentative adoption	Board of supervisors
November 30	Advertise budget	Secretary
December 3-23	Budget open to public inspection	Secretary
December 27	Adopt budget and resolution setting real estate tax rate	Board of supervisors
January 2	Create budget accounts in new ledger	Secretary

## Capital Improvements Planning and Budgeting

Sound financial management is 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.<sup>4</sup> Townships also may establish separate revolving funds for capital improvements or road machinery and fund them with special taxes.<sup>5</sup>

**Capital Improvements Program.** A capital improvement is a major facility involving a nonrecurring cost which usually requires a large capital outlay and 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 bounds of the community’s ability to finance them. Nonrecurring, noncapital items such as major engineering studies may also be included for planning purposes. Generally, a 5 or 6-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 the capital improvements program include:

1. Efficient implementation of the community’s goals, objectives and comprehensive plan.
2. Coordination of plans and policies to avoid overlapping projects;
3. Maintaining financial stability through fluctuations in the tax rate;
4. Lengthening available lead time to avoid last minute delays caused by technical difficulties and scheduling of resources;
5. Improvement of credit rating and interest savings; and
6. Enhancement of opportunities for state and federal grants.

Common elements involved in developing the capital improvements program include determining capital costs, translating capital costs to annual costs, comparing costs with available resources, determining priorities and developing the financial schedule. Cost estimates of capital improvements should be made by an engineer or architect. However, rules of thumb may be used for rough preliminary estimates. State and federal subsidies may reduce local costs. It is important to translate capital costs into 2 major elements of annual costs: annual debt service or borrowing costs (*principal and interest*) and the costs of operating the facility. Financing these costs may be accomplished through:

1. Payment from a special fund or reserve;
2. A pay-as-you-go approach through an 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 source; or
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 will be 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 3 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 Second Class Township Code requires at least 3 written or telephone price quotations for contracts between \$4,000 and \$10,000.<sup>6</sup> A written record of the price quotes must be made and retained on file for 3 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 \$4,000 are exempted from mandatory bidding and price quotation requirements.

For most purchases or contracts in excess of \$10,000, a municipality must advertise for a competitive bid contract.<sup>7</sup> Competitive bid contracts are basically of 2 types: a lump sum contract and a unit price contract. For both types of contracts, the board of supervisors must either accept the lowest bid or reject all bids.

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 payment 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 the advertising requirements 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 supervisor who knowingly votes in violation of these provisions is subject to a surcharge of 10 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 Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

## Officers' Bonds

It is the responsibility of the board of supervisors to designate the elected and appointed officials and employees of the township to be covered by a fidelity bond.<sup>8</sup> 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 and the amounts have been determined.

The Second Class Township Code requires the treasurer and tax collector to be bonded. In the case of members of the board and other officials, the Code makes bonding permissive — in other words, the supervisors may bond these persons if they believe it is necessary. All township officials and employees who handle township funds should be bonded. The amount of the bond should correspond to the amount of money the individual handles. Bonding requirements should be reviewed and obtained on an annual basis. The form of the bond should be reviewed by the solicitor to determine if the bond's provisions are in the township's best interests. Blanket bonds, which list all bonded employees and the amount of their bond on a single form, thus reducing paperwork are available. 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. The premium of the tax collector's bond is shared by all taxing districts 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 under the Local Government Unit Debt Act.<sup>9</sup> Before entering into any borrowing arrangement, the legal and financial details should be worked out with the municipal solicitor, a bond counsel or other financial consultant. Borrowing actions in excess of \$100,000, or 30 percent of the borrowing base, must be approved by the Office of Chief Counsel, Department of Community and Economic Development. The Local Government Unit Debt Act sets the non-electoral debt limit for townships at 250 percent of the average total revenues for the past 3 years and establishes important procedural requirements for incurring debt.

Major provisions of the Local Government Unit Debt Act are listed below:

1. No limit is established on electoral debt.
2. Bond anticipation notes may be issued 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 40 years or 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 anticipated tax revenues and must be repaid during the fiscal year it is incurred.
7. A municipality in financial crisis may be able to issue unfunded debt to meet financial obligations.

For additional information on municipal borrowing, please consult the *Debt Management Handbook* available from the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

## Pension Funding

Townships are authorized to create pension funds for their employees or to join the Pennsylvania Municipal Employees Retirement System. Townships with 3 or more full-time police officers must establish a police pension fund. The Municipal Pension Plan Funding Standard and Recovery Act requires municipalities to fully meet the actuarial funding requirements of their pension plans.<sup>10</sup> Municipalities are 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 to all municipal employees' pensions.

## References

1. 53 P.S. 68205; Second Class Township Code, Section 3205.
2. 53 P.S. 6901; Local Tax Enabling Act.
3. 53 P.S. 68202; Second Class Township Code, Section 3202.
4. 53 P.S. 66508; Second Class Township Code, Section 1508; *Turner v. Cheltenham Township*, 19 D.&C.2d 105, at 112, 1958, C.P. Montgomery Co.
5. 53 P.S. 68205; Second Class Township Code, Section 3205.
6. 53 P.S. 68102(b); Second Class Township Code, Section 3102(b).
7. 53 P.S. 68102(a); Second Class Township Code, Section 3102(a).
8. 53 P.S. 65502; Second Class Township Code, Section 502.
9. 53 P.S. 6780-1; Local Government Unit Debt Act.
10. 53 P.S. 895.101; Municipal Pension Plan Funding Standard and Recovery Act.

## VI. Municipal Services

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Before the middle of the twentieth century, township services were generally restricted to the maintenance of roads. The growth and dispersal of population in the past few decades has placed greater demands on townships by citizens desiring increased public services. The Second Class Township Code has been amended frequently to provide authorizations for townships to meet these needs. The municipal services now provided by second class townships cover a much wider range than in the past. Small, rural townships may still do very little other than maintain roads, but large townships located in urban and suburban areas often provide the same services as large boroughs and cities.

### Roads

Statewide, maintenance of roads is still the primary function of townships. Townships maintain more than 50,000 miles of roads in Pennsylvania. In 2003, expenditures for streets and roads constituted 25 percent of all township expenditures. Almost 29 percent of township road expenditures were met from liquid fuels funds.

The Code imposes explicit duties on the supervisors to keep the roads open.<sup>1</sup> Supervisors have a statutory duty to repair and maintain public roads and this duty can be enforced by the courts.<sup>2</sup> While the Code requires townships to keep roads and bridges in repair and roads free of obstructions, the courts have declared that townships do not have an enforceable duty to inspect, install and replace road signs, or to clear vegetation obstructing views at an intersection.<sup>3</sup> These activities, while authorized by the Code, are discretionary on the part of townships. However, the courts have been moving toward requiring a greater level of care on the part of all local governments and a township's statutory responsibilities should not be taken lightly.

In many rural townships, supervisors actively work on the roads, serving as roadmasters or laborers. Second class townships are the only form of government which allows this practice, however, there is no requirement for supervisors to work on the roads. More townships are appointing road foremen and laborers who are not elected officials, but whose work is directed by the board of supervisors.

The Code contains extensive provisions for laying out, opening and repairing roads. A valuable overview of these functions is the *Maintenance Practices for Local Roads*, distributed by the Office of Research, Pennsylvania Department of Transportation.

Township supervisors have the power to provide for sidewalks and footpaths within the township. These may be installed by the township at public expense or paid for in part or completely by assessments against the abutting property owners in built-up areas.<sup>4</sup>

### Street Lighting

The Second Class Township Code authorizes supervisors to provide street lighting paid from the general township funds or through assessments on abutting property owners or by a combination of these payment methods<sup>5</sup> Since street lighting may be a service offered only in certain sections of a township, street lighting districts are often created where property owners, regardless of tax-exempt status, are assessed a millage against property values or a fixed rate on a front foot basis to pay for this service. Some flexibility is permitted in the method of setting rates and granting of exemptions based on unusual physical situations. A set of rules and regulations should be prepared for each assessment district which clearly describes the means by which properties are assessed.

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.<sup>6</sup> Townships are authorized to appoint police officers and establish police departments.<sup>7</sup> They may also contract for police services from adjoining municipalities. In 2005, 456 second class townships, or 31 percent of the total, had local police agencies providing protection, including local police forces, regional forces and contracted services. The remaining townships relied on the State Police for protection. In 2003, of the those townships providing some form of local police services, expenditures for police services constituted 18 percent of all township expenditures.

All police officers must complete minimum training requirements set by the Municipal Police Officers' Educational and Training Commission prior to receiving power to enforce the Crimes Code and Vehicle Code and to carry a firearm.<sup>8</sup> The Commission also requires that applicants for police officer positions undergo physical fitness exams, psychological exams and background investigations prior to employment. In addition to these requirements, 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.<sup>9</sup> Annual in-service training is required for all municipal police officers to remain certified for employment as a police officer. This requirement applies to both part-time and full-time officers.

The Code does not require civil service coverage for police officers, but the board of supervisors is free to create a merit system. The board has been given broad powers with respect to the employment, compensation and termination of police officers. While supervisors are not mandated to follow specific civil service procedures in hiring police officers, second class townships are urged to adopt such standards in light of court decisions interpreting the Veterans' Preference Act.<sup>10</sup> A full description of the reasons for this approach may be seen in *Model Municipal Police Hiring Policies* published by the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com). Generally, townships can give greater protection to employees than provided under the Code, but when they do so they are bound by their own rules.<sup>11</sup> Any township with 3 or more full-time police officers must establish a police pension fund.<sup>12</sup>

## Firefighting

Another basic exercise of the general police powers of townships is the provision of fire protection. The Second Class Township Code gives supervisors the power to control fire protection activities within the township.<sup>13</sup> To secure fire protection for township inhabitants, the board of supervisors may purchase fire apparatus for use in the township or appropriate funds to fire companies located within the township.<sup>14</sup> The township also may contract with nearby municipalities or fire companies for fire protection services. In 2003, fire protection expenditures totaled 4 percent of all township expenditures.

The Code gives boards of supervisors 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 residents.<sup>15</sup> These powers extend even to the point of enacting an ordinance preventing a particular fire company from responding to fire calls within the township and enforcing the ordinance through an injunction.<sup>16</sup> Any new fire companies in the township must receive the approval of the board of supervisors before organizing and operating. In almost every case, fire service activities are delegated to independent volunteer fire companies. Decisions on budgeting and paying appropriated funds are entirely up to the discretion of the board of supervisors, unless controlled by an enforceable contractual obligation.<sup>17</sup> The amount of township financial support can range from nothing to substantial. A special fire tax millage may be levied for fire protection purposes.

When the fire company is located within its borders, the township is responsible for providing workers' compensation coverage for the firefighters.<sup>18</sup> Where the township is served by one or more fire companies outside its boundaries, there is a moral -- 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 action of volunteer firefighters in performing their official duties.<sup>19</sup> 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 and workers' compensation 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 has been the development of a system of fire hydrants for the benefit of residents served by a public water supply. Since not all residents have public water available, less developed areas are served by tanker trucks, farm ponds or streams. The cost of fire hydrants may be financed through the rates water customers pay, or a separate assessment levied by the township and collected by the tax collector. The assessment may be based on each property's front footage or assessed valuation. This assessment is levied on both taxable and exempt properties because it is not considered a tax, but rather a fee for services received.

Townships need 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 will provide the correct pressure and hydrant location for fire suppression.

## **Ambulance/Rescue Services**

Ambulance and rescue services have traditionally been allied with fire protection. In the past, the volunteers who provided firefighting services would provide ambulance and rescue services as well. 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 makes it difficult for a volunteer firefighter to be cross-trained as an EMT or paramedic. Today, most ambulance services are staffed by several professionals so that at least one trained crew member is available at all times. The number of professional ambulance service providers is growing as the number of emergency calls increase and fewer volunteers are available.

Townships are authorized to support ambulance and rescue services.<sup>20</sup> 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.<sup>21</sup> Following a court decision in 1991, the Second Class Township Code was amended to authorize townships to use eminent domain proceedings to acquire land for recreational use.<sup>22</sup> 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.<sup>23</sup> 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 facilities directly or assign this duty to a recreation board. The recreation board may be a joint board with other municipalities and/or school districts<sup>24</sup> and must consist of five, seven or nine members.<sup>25</sup> The Code authorizes a special tax for park and recreation purposes, but costs also may be met from general township funds.

## **Libraries and Cultural Services**

Other services townships provide include libraries and cultural services. Townships often must contribute to the funding of a local public library to ensure their citizens have access. Townships may cooperate in funding a library in a nearby town or may undertake the provision of this services themselves. In addition to being able to use general township funds to support libraries, townships also may levy a dedicated millage to fund them.<sup>25</sup> 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 from township funds.<sup>26</sup>

## **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.<sup>28</sup> 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 supervisors 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.<sup>29</sup> In years past, restrictive debt limits made it hard for township to borrow money to construct sewer systems, encouraging the use of authorities for this purpose. Since 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, or the hesitancy of elected officials to become directly responsible for setting sewer rates are contributing factors. Once created, an authority is a separate entity and supervisors can affect its decisions only by appointing members. The operation of the authority is governed under the terms of the Municipality Authorities Act.<sup>30</sup> For additional information on authorities, please see *Municipal Authorities in Pennsylvania*, a publication available from the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

Collection, treatment and disposal of sewage is one of the fastest growing expenditure areas for local governments. In 1998, sewer expenditures by township governments (*not counting authorities*) comprised 7 percent of all township expenditures. The sewage service may be the single most costly municipal service for the average homeowner. It is not unusual for household sewer bills to exceed real estate taxes in second class townships.

Townships may operate water supply systems or may contract with private utilities or adjoining municipalities for water supply services.<sup>31</sup> In addition, authorities are frequently used to construct and operate water systems. Direct ownership and operation by a township government is rare. 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 private community water systems that can no longer afford to operate on their own.

## **Emergency Management**

Another service that townships must provide is emergency management.<sup>32</sup> An emergency management coordinator must be appointed and a plan must be prepared to provide reasonable guidelines during an emergency. Emergencies can range from severe storms, including blizzards, to plane crashes or toxic spills along highways or railroads.

The emergency management coordinator is appointed by the Governor upon the recommendation of the board of supervisors.<sup>33</sup>

While traditionally emergency management was perhaps not often needed nor even thought about, both man-made and natural events in recent years have served to focus everyone's attention on the importance of effective emergency management planning at all levels of government. In addition to being important, it is a mandated function of townships and requires the serious attention of and action by all boards of supervisors.

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29. 53 P.S. 68501; Second Class Township Code, Section 2501.
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## VII. Land Use Control and Environmental Regulation

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The power and responsibility to plan for land use and its regulation lies exclusively with local government. Local governments have been given the power to plan their own community development through the Pennsylvania Municipalities Planning Code (MPC). No state agency has been assigned responsibility to administer any of the land use powers in the event a unit of local government fails to exercise a delegated power. The MPC 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 MPC outlines the steps a landowner or person aggrieved can follow to have their day in court.

The MPC establishes the basic law for a municipality in Pennsylvania to plan for community development through preparing a comprehensive development plan and to govern such development through zoning and subdivision and land development ordinances.<sup>1</sup> The MPC provides for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards and authorizes those bodies to charge fees, make inspections and hold public hearings. The MPC provides for appropriations, appeals to courts and penalties for violations.

Land use controls may be looked at as an ounce of prevention since they offer protection against undesirable effects of development or the need for costly correction. A subdivision with a poorly designed circulation system or otherwise inadequate streets will cause traffic problems and higher taxes. Inadequate drainage can be prevented by a subdivision and land development ordinance. Zoning can establish adequate building setbacks so that later road widening need not wipe out substantial portions of front yards and can reduce costs of right-of-way acquisitions or avoid 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 would violate. Denial of an application cannot be based merely on what an individual supervisor believes is good planning. Also, conditions may not be placed on approvals that are not authorized by the MPC and the local ordinance. For example, Commonwealth Court has held that municipalities cannot condition subdivision approval on dedication of additional abutting road frontage property to the municipality.<sup>2</sup>

Copies of the MPC and other publications relating to municipal planning and zoning functions are available from the Governor's Center for Local Government Services at [www.newPA.com](http://www.newPA.com).

### Comprehensive Planning

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 entity, such as a large city or a new highway, will frequently need to reassess the adequacy of its comprehensive plan.

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

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 multimunicipal planning group. Article XI of the MPC provides additional planning and regulatory options and incentives to municipalities that adopt multimunicipal plans. Commonwealth agencies, especially DCED and the Governor's Center for Local

Government Services, provide funding for new multimunicipal plans, implementing ordinances and other regional initiatives. State agencies are also directed to consider and may even rely upon multimunicipal plans and resultant zoning ordinances in their funding and permitting processes. A multimunicipal 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 MPC requires a comprehensive plan to include the following.

1. A statement of the township's objectives with respect to future growth and development, including the location, character and timing of future development. These objectives may also serve as a statement of community development objectives required in any zoning ordinance.
2. A land use plan describing the amount and intensity of use appropriate for residential, agricultural, industrial and business uses taking into account prime agricultural land, traffic, topography, floodplains, natural resources and similar factors.
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 in 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 your township corresponds to theirs.
7. A statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities or a statement indicating buffers or other transitional devices to be used between disparate uses. A statement must also be included indicating that the municipality's comprehensive plan is generally consistent with the county comprehensive plan.
8. A plan for the protection of natural and historic resources to the extent not preempted by federal or state law.

The preparation of 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. After this study is completed, recommended land uses are determined and illustrated on maps. When the comprehensive plan document is complete, 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 dealing with the problems of growth and change constructively. 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 viewed as a requirement of the MPC which has to be completed, but has no real relevance. This is incorrect. 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 supervisors after public input. The comprehensive plan should be able to 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 step is 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 complete.

Your solicitor should review both these documents after completion by the planning commission. When the planning commission is satisfied with the ordinances, public hearings must be held by the planning commission and a recommendation is then made to the board of supervisors. The ordinance may be adopted after additional public hearings are held by the board.

## **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 that all plots of land lying within the municipality 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 MPC, 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. 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 municipalities across the state have developed alternative standards that result in styles of development radically different from the prevalent suburban pattern. Supervisors have serious decisions to make which will affect 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.

## **The Zoning Ordinance**

Zoning is a method of land use control whose basic objective is to achieve 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 MPC, 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 classifications 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 will ensure proper professional planning techniques in the writing of the ordinance and preparation of maps, and make certain the zone classifications conform to the comprehensive plan. The third rule is the zoning ordinance must be consistent with the provisions of the MPC.

## **Floodplain Regulations**

Floodplain regulations are adopted by municipalities to help them manage their floodplains so damage caused by floods can be avoided or minimized. 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 flood plain established both by the National Flood Insurance Program Act and the Pennsylvania Floodplain Management Act. Municipalities wishing to adopt regulations exceeding these standards may do so. The Commonwealth 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.

The National Flood Insurance Program provides for flood insurance coverage of buildings and contents within municipalities participating in the National Flood Insurance Program. Municipalities not participating in the program will be denied federal financial assistance including disaster assistance for acquisition and construction activities within identified flood hazard areas. Lending institutions are required to notify 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 floodplains can be made easier in undeveloped sections of townships by including floodplains into the land development and subdivision ordinance and requiring special treatment for flood plains in much the same manner as wetlands. If no additional development occurs in the floodplain, problems related to flooding will not increase in severity. By actually allowing the floodplain to flood, downstream damage will be 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. Floodplain management can be used to further positive development goals of the township.

The Flood Plain Management Act encourages floodplain management by requiring participation in the National Flood Insurance Program.<sup>3</sup> While the Act allows municipalities to adopt floodplain regulations exceeding minimum flood insurance program standards, the Act requires municipalities to give special consideration to certain obstructions posing special hazards in floodplains. The Act also authorizes the Department of Community and Economic Development to provide both technical and financial assistance to help municipalities administer local floodplain regulations. In addition, the Department is to oversee the coordination of local floodplain 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 the accelerated stormwater runoff resulting from land development.<sup>4</sup> 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 townships' ordinances to 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 floodplain regulations, should include a planning element going

beyond simple restrictions. The combination of regulations affecting floodplains, 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 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, 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 the plan with other ordinances for an overall approach to managing the flow of water.

Many townships will assume the responsibility for maintenance of facilities serving an entire area where they are properly constructed and a cash payment into a stormwater maintenance fund assures perpetual maintenance will not be a burden to the taxpayer. These retention areas are often “wet,” meaning that they contain a pond during dry periods, 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.<sup>5</sup> 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, which explains in detail the requirements for these plans. The act is administered by the Department of Environmental Protection.

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.<sup>6</sup> 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.<sup>7</sup>

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 whether or not the module conforms. Whether for a single lot or community system, a sewage module must be given approval by the Department of Environmental Protection 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. Larger townships may license haulers, contract with one or more private haulers to collect waste, or even provide waste collection using township employees and equipment.

The Solid Waste Management Act provides for the planning and regulation of solid waste storage, collection, transportation, processing and disposal systems.<sup>8</sup> The Act requires municipalities with a population density of 300 or more persons per square mile to submit plans for solid waste management and authorizes grants for the

preparation of plans. 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.<sup>9</sup> This law requires larger municipalities to implement a local recycling program. Recycling programs are voluntary for municipalities under 5,000 population. Each larger municipality must enact its own recycling ordinance. The local ordinance must designate at least three materials that residents will be 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 Second Class Township Code gives township supervisors power to regulate and control collection, removal and disposal of solid waste.<sup>10</sup> Courts have held this includes reasonable regulations and zoning ordinances governing sanitary landfills, not inconsistent with the Solid Waste Management Act.<sup>11</sup> Although the Act protects hazardous waste facilities from local prohibition, townships can adopt reasonable regulations to protect the health and safety of residents.<sup>12</sup> A court determined sewage sludge from a composting facility was refuse under the Code and could be regulated by the township.<sup>13</sup> But municipalities may not regulate solid waste disposal or landfill operations, since these are governed by state regulations.<sup>14</sup> Townships have the power to regulate and license junkyards and have the power to declare certain activities to be nuisances, including storage of junked vehicles, when they constitute nuisances based on actual conditions.<sup>15</sup>

## **Historic Districts**

The Historic Districts Act permits municipalities to designate certain areas as historic districts subject to special controls.<sup>16</sup> 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 are intended to 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 Preservation**

The Agricultural Area Security Law authorizes local governing bodies to create agricultural areas composed of at least 250 acres of viable agricultural land.<sup>17</sup> 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 board of supervisors.

Municipal and 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 prohibits development on 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 that acquire development rights and even land 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, municipal and county purchase of development rights and activities of conservancies can have a dramatic impact on an area.

## References

1. 53 P. S. 10101; Pennsylvania Municipalities Planning Code, Section 101.
2. *Board of Supervisors of West Marlborough Township v. Fiechter*, 566 A.2d 370, 129 Pa.Cmwlth. 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.Cmwlth. 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.Cmwlth. 323, 1992.
8. 35 P. S. 6018.101; Solid Waste Management Act.
9. 53 P.S. 4000.1501; Municipal Waste Planning, Recycling and Waste Reduction Act; 1988 P.L. 566, No. 101.
10. 53 P.S. 67102; Second Class Township Code, Section 2102.
11. *Kavanagh v. London Grave 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.
12. *Sunny Farms, Ltd. v. North Codorus Township*, 474 A.2d 56, 81 Pa. Cmwlth. 371, at 376, 1984.
13. *Hunlock Township v. Hunlock Sand and Gravel Corporation*, 601 A.2d 1305, 144 Pa.Cmwlth. 499, 1992.
14. *Monroeville v. Chambers Development Corporation*, 489 A.2d 297, 88 Pa.Cmwlth. 603, at 609, 1985.
15. 53 P.S. 66532; Second Class Township Code, Section 1532(a)(4); *Bradley v. South Londonderry Township*, 440 A.2d 665, 64 Pa.Cmwlth. 395, at 403, 1982; *Price v. Smith*, 207 A.2d 887, 416 Pa. 560, 1965; *Commonwealth v. Cortiss*, 13 D.&C.4th 291, 1992.
16. 53 P.S. 8002; 1961 P.L. 282, No. 167.
17. 3 P.S. 901.

## VIII. Intergovernmental Cooperation

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### Merger and Consolidation

Throughout the United States and Pennsylvania, elected local government officials are being confronted with problems which lend themselves to regional solutions. 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 that increased services not be matched by increased taxes. State and federal governments are also making demands by insisting that local elected officials solve problems of solid waste disposal and sewage, air and water pollution. These actions are frequently 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, flood control and water supply.

Since problems frequently extend beyond municipal boundaries, it is sometimes suggested that merging municipalities may be an answer. A procedure enabling municipalities to merge or consolidate is found in the Municipal Merger or Consolidation Act.<sup>1</sup> It is accomplished through voter referendum. This option has not proven 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.

### Council of Governments

Because structural consolidation has been acceptable in only limited circumstances, municipalities have found other ways to address regional issues. One approach has emerged that enables elected officials to solve regional problems while maintaining and strengthening individual local government sovereignty. This is the council of governments 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 member municipality in an area as an efficient way to solve regional problems. Local governments already engaged in regional programs through a council of governments 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.

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 is intended to provide an entity for undertaking cooperative municipal activities authorized by the state constitution and laws such as the Intergovernmental Cooperation Act.<sup>2</sup> By mutual agreement, the members seek solutions to mutual problems.

A COG is an informal council. It is not a government, 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 any 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; they engage 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 councils act as a forum to identify, discuss, study and reach policy and priority agreements on regional problems and opportunities.



## Intergovernmental Cooperation

Across the state, municipalities have found many ways to work together to provide better municipal services at a lower cost. Whether through a COG or a formal or informal agreement, following are examples of opportunities for intergovernmental cooperation:

**Roads.** Every township in the state participates in the care and maintenance of roads. Increasing concern for properly maintained roads and better snow removal has made more townships consider the possibility of working with their neighbors in some manner. Joint purchasing of salt, anti-skid 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 possible 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 which currently exist between townships may change with the arrival of new personnel or elected officials.

**Police Services.** Because of the increasing cost of providing local police service, there is growing interest across the state in the creation of regional police agencies serving two or more municipalities. Many townships now receive their police services from such regional organizations. The larger forces permitted through joint action provide 24-hour coverage, development of specialized fields within the police force and better utilization of equipment and staff.

**Parks and Recreation.** 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 even be offered. Neighboring communities offering competing programs often find that the activities of both will fail. There is always a population which badly needs recreation programs, but there may not be a large enough target population in two communities to support two sessions of the same activity. Staff hired by neighboring 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 be providing yet another set of programs. Joint operation can usually provide better programs at lower costs and certainly joint planning will always provide benefits to all participating entities with no out of pocket expense.

School districts often have recreation facilities which may be underutilized. From early June through the end of August, school auditoriums, multipurpose rooms and libraries are empty, while 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 all taxpayers if both the township and school district understand the specific needs and problems faced by the other party.

**Building Codes.** Proper building and housing code enforcement requires experienced and well-trained inspectors. Such employees are usually not available on a part-time basis. Smaller townships may find 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 across Pennsylvania. Code enforcement is one of the most successful programs which COGs operate for townships and boroughs in the state. Municipalities banding together or using COGs are able to attract better qualified professionals to manage their programs than by acting alone.

**Land Use.** An amendment to the Pennsylvania Municipalities Planning Code in 2000 provides opportunities for municipalities to cooperate on land issues while maintaining their sovereignty. This amendment authorizes multimunicipal planning, where two or more municipalities can work together to create a multimunicipal comprehensive plan. The municipalities then base their other land use ordinances on this plan. The advantages of multimunicipal planning are that municipalities can pool their resources to develop the plan, which can be a costly undertaking. In addition, the MPC authorizes participating municipalities to provide for every use within the entire area of the plan. A municipality adopting land use ordinances on its own is required to provide for every use within its borders.

## **Municipal Authorities**

Townships may form municipal authorities for certain purposes.<sup>3</sup> 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. It is a public corporation engaged in the administration of civil government. 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 to establish a governmental unit to raise money independently 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, 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. If a township creates an authority to operate the sewer system, it surrenders power over important public policy issues such as the extent of service and cost of sewer service. An authority does not answer to the voters in the same manner as the board of supervisors. Nor does it answer to the supervisors except through the appointment of new members as terms are completed. Authorities have a greater borrowing capacity than townships, but 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 areawide 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 has the responsibility 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 improvements funds, as appropriate. A portion of the revenue is retained by the municipality to pay for treatment plant operations and maintenance.

In this kind of leaseback arrangement, the municipality and the authority should clearly indicate the responsibilities of each party, particularly regarding capital expenditures for the system. Often the municipality will set aside capital reserves within the sewer revenue fund to provide for capital expenditures such as trucks or other movable equipment. In addition, the authority will usually maintain a capital improvement fund for expansions or major improvements to the system.

A financing and operating authority differs from that described in the preceding paragraph. An 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 township. 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 an authority.

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

Municipal authorities are governed by a board whose members are appointed by the governing body of the incorporating local government. Boards may not consist of less 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.

An authority can provide 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 clearly state 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. The municipalities can require audits of authority accounts and can fix salaries of the authority members, if they are paid. 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 will be bound by the terms of the bond indenture. 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.<sup>4</sup>

## References

1. 53 Pa.C.S.A. 731; Municipal Consolidation or Merger Act.
2. 53 Pa.C.S.A. 2301; Area Government and Intergovernmental Cooperation.
3. 53 P.S. 303; Municipality Authorities Act, Section 3.
4. *Forward Township Sanitary Sewage Authority v. Township of Forward*, 654 A.2d 170, Pa.Cmwlth., 1995; *Mifflin County v. Mifflin County Airport Authority*, 437 A.2d 781, 63 Pa.Cmwlth. 56, 1981.

# Glossary of Terms

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

**Administrative.** Pertaining to the 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 tax levied on the property. Also, a special charge levied on each property within a special assessment district for an improvement benefiting 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 that promises 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 for spending and receiving money to sustain municipal operations during a fiscal year together with related explanation. 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 home rule 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 textual matter, 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.

**Consolidation.** The combination of two or more municipalities that results in the extinction of all the municipalities to be consolidated and the creation of a new municipality that assumes jurisdiction over all the former municipalities. The consolidation of volunteer fire companies or other governmental entities can be defined in a similar way.

**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 area 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.

**Floodplain.** 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 boroughs and cities, the board of commissioners in first class townships and counties, 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 where public business may be transacted.

**Merger.** The combination of two or more municipalities that results in the extinction of all but one of the municipalities being merged. The remaining municipality absorbs and assumes jurisdiction over the former municipalities. The merger of volunteer fire companies or other governmental entities can be defined in a similar way.

**Mill.** A property tax equal to \$1 of tax per \$1,000 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, semidetached, attached and multistory 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 provide 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 benefited 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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