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**Allegheny County Headed to Court over Plan to Spend Drink Taxes**

So now it begins. Yet another lawsuit has been filed against Allegheny County for violating or getting ready to violate state law. As we wrote in an earlier *Policy Brief* (*Volume 8, Number 55*), the County government has been sued several times and has lost suits over its willful defiance of state law. The latest suit filed aims to stop the County from diverting excess revenues generated by the new drink tax to purposes other than mass transit. And as we shall show, if the Courts interpret plain language the way it was written, the County will lose another suit.

Here's some background leading up to the suit filing.

“Drink and car rental fee collections above the \$32 million budgeted for 2008 will be used for debt service related to roads and bridges in my 2009 budget, as allowed by Commonwealth law”—Chief Executive Dan Onorato, 2009 Budget Address

What Commonwealth law was the Executive referring to in his address? It was language in Act 44 creating the drink and car rental taxes that would provide “financial support for transit systems”, meaning specifically the local match for the Port Authority, which the Executive wanted to shift from property taxes onto the new levies. The taxes are going to bring in substantially more than will be needed to cover the County’s required match, so, County officials began to devise plans for spending the excess revenue.

As such, an opinion was solicited from the state’s Legislative Reference Bureau and it was rendered on May 22, 2008 (the contents of the opinion appeared in a newspaper article in October). This is interesting in itself in that it suggests that early on the County fully expected to collect more revenue than needed and wanted clearance to use the surplus for purposes other than Port Authority.

The Reference Bureau opinion says that since neither “transit systems” nor “financial support” was defined in the statute, the definitions must be “taken at their plain meanings”. In short, the excess tax revenues could be used for anything related to infrastructure, design, engineering, construction, debt service, and financing “as long as the costs are solely related to transit systems”. In plain English that means the transit system, not just any road or bridge that happens to carry a bus during the course of a run.

It is easy to see why the Executive says he wants to use the money for overall debt service, if that is where the money is really going to go: it has grown 17% since 2006 from \$59 million to \$69.5 million. But it is a stretch to say that dedicated transit funding—funding that was sitting in escrow while the Port Authority contract was still in some state of negotiation—could be used for general road and bridge debt service.

This raises a lot of issues. The most important is: Since the Constitution of the Commonwealth of Pennsylvania prohibits the use of gas tax revenues for mass transit, it is obvious that the framers of the Constitution saw a clear distinction between transit and regular transportation. Then too, the County's own capital budget separates functions into categories of "roads", "bridges", and "Port Authority".

Clearly, what County officials are doing is an effort to blur the lines between mass transit and other transportation infrastructure in order to shift the excess revenues to other uses. As Mark Twain was fond of saying, "That dog won't hunt." This blurring effort makes a mockery of settled law. It needs to be stopped. Unfortunately, it will take a Court ruling to do it.

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As 2008 draws to a close, we want to take the opportunity to thank our *Policy Brief* subscribers and readers. You are a major reason for our success in bringing a free market, common sense approach to understanding policy issues in Allegheny County and Pennsylvania.

And during this wondrous season the staff of the Allegheny Institute wishes you joyous and peaceful Holidays and a prosperous New Year.

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