



December 4, 2015

Policy Brief: Volume 15, Number 56

A Solution to the ICA-City Squabble

Three years ago, in November of 2012, Pittsburgh's Act 47 recovery team recommended to the state department that oversees it (Community and Economic Development, or DCED) that it was no longer needed. DCED ruled against that recommendation and kept Pittsburgh in Act 47 status.

Now DCED is poised to make a decision on the future of the City's other financial overseer, the Intergovernmental Cooperation Authority, also known as the oversight board or the ICA. To say that relations between the oversight board and the City of Pittsburgh are frosty is an understatement. At various points this year there has been a disapproval of the previously approved City's 2015 operating budget, an open records decision on ICA contracts and communications that the City sought, a request for members of the state legislature to act as mediators in the dispute, and an audit on the ICA conducted by the state Auditor General's office.

That audit—released November 10th—stated “The ICA’s approval of three consecutive balanced budgets [2013, 2014, and 2015] appears to meet the standard set in the ICA act that would allow the DCED secretary to proceed with dissolving the ICA”. The standard referred to is in Act 11 of 2004, Section 204 describing “term of existence”. If DCED rules that those three budgets and plans were approved, the oversight board would be dissolved.

Clearly a lot hangs on “legalese” as what exactly Act 11 means in regards to board approval of City budgets and financial plans. Adding some specific metrics to the law as we suggested in 2012 (see *Policy Brief Volume 12, Number 56*) would have been helpful in clarifying this issue.

During a visit to southwestern Pennsylvania last week, the DCED secretary stated “Our attorneys have to give me a legal opinion that says, ‘This is what it is. You have to,’ or, ‘You don't have to...I want to be able to settle this one way or another. There's a solution out there. I just want to make sure it's the right one.’” One wonders how long that opinion will take. And if the opinion calls for dissolving the ICA will there be substantial pushback from the Republicans in the Legislature?

The desired solution from the City's perspective would seem to be for the ICA to disappear. Is that the solution for the state as well? If events play out in such a way that the ICA does not get dissolved, there is a relatively easy fix to get the oversight board to move toward a much friendlier relationship with the City. Simply put, the officials charged by statute to make appointments to the board need to make them to fill the three open seats.

Section 202a of the Act states that the Governor, the President Pro Tem of the Senate, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader each make an appointment to the ICA board. Currently, there are only two serving board members and they are Republican appointees.

The other three seats—all to be appointed by Democrats—are vacant due to one appointee's death, one appointee's term expiring with the expiration of the former Governor's term, and a resignation. When the resignation occurred the Mayor of Pittsburgh was quoted in a news article as saying that "The board...now doesn't have enough members to vote on anything". Section 202d says that "A majority of the board shall constitute a quorum for the purpose of conducting the business of the board and for all other purposes". By that clear language it appears that it takes three of five members to take action, but one could see an argument made that vacant seats don't count in determining a majority, especially since the language does not specify what should happen if there are only two seated members. Indeed, if three appointing officials refuse to make appointments and the courts rule that any action requires at least three votes, then the board would be effectively constrained from taking any action.

Is it a deliberate strategy by the officials with unfilled appointments to refuse to make appointments so as to delegitimize the ICA? It is certainly a question worth asking in view of the length of time the unfilled board seats have been vacant. Moreover, it is not clear what, if anything, could be done to force an elected official to make an appointment to the board. Section 202b does state that "Whenever a vacancy occurs among the appointed members on the board, whether prior to or on the expiration of a term, the appointing authority who originally appointed the board member whose seat has become vacant shall appoint a successor member within 30 days of the vacancy". But who would have standing to seek a court ruling that would enforce the "shall appoint" language?

For what it is worth it does not appear these officials have any objection in principle to appointing board members to municipal oversight agencies, as the Intergovernmental Cooperation Authority for Cities of the First Class (overseeing Philadelphia's finances) has its full complement of five board appointees according to its website, all appointed or reappointed by the same five officials who are charged with appointing ICA board members.

What can be the motivation of these three officials for not finding appointees for the ICA vacancies who would be sympathetic to the City? They could vote together to advance ICA business, even if it occurred on a series of 3 to 2 party line votes. A 3 to 2 partisan vote would release gaming money the City receives from hosting the Rivers Casino (a

critical issue in the current dispute), approve operating budgets, and make City-overseer relations much more amicable. So what is the objection to going this route in light of what has played out over most of 2015?

Indeed, why is the Mayor not pressing the Democrats with appointment authority for just such appointments to be made instead of trying to find legislators to mediate disputes with the ICA? Or have such appeals gone unheeded? It would seem far better to have an agreeable Democrat majority ICA that could be of great help to the City for at least the next three years covering the current Governor's term. Moreover, if the ICA under majority control of Democrats wanted to move to dissolve itself, it would have the votes.

Something about all this does not add up. Does the problem stem from opposition from Republican leaders to the dissolution of the authority? If that is the case would it not be a better plan for the Democrats to appoint a majority of loyal party members to run the ICA in a manner that is solicitous of the City's wants and needs, thereby undermining many of the reasons to oppose dissolution? Indeed, having the majority in control could hasten the demise of the ICA.

With so much to gain by making the appointments it is mystifying as to why they are not being made. Trying to undermine the ICA by refusing to appoint members of the board just creates drawn out legal issues that are unnecessary, probably costly, and gives more ammunition to those who are cynical about the manner in which their government operates.

Why do issues like those surrounding the refusal to make ICA appointments that should and could be solved simply by following the laws on the books have to face possible long, drawn out and expensive court battles to get resolved? At some point in this standoff, that will almost certainly happen. Political battles ought to be fought in Harrisburg at the state capitol, not in court as legal squabbles.

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