

Time to Shine a Legislative Light on the Sports and Exhibition Authority

On November 5th the Court of Common Pleas of Allegheny County ruled that the Allegheny County Controller does not have the power to audit four Authorities related to Allegheny County: the Allegheny County Airport Authority, the Allegheny County Sanitary Authority (ALCOSAN), The Sports and Exhibition Authority (SEA), and the Port Authority of Allegheny County (PAT). The Court's opinion is that these Authorities were created by state law and are therefore not subject to review by the Controller.

As we wrote earlier this year (*Policy Brief Volume 15, Number 4*), regarding the Controller's request to audit the Sports and Exhibition Authority (SEA), "the law seems clear. As long as the SEA annually delivers to the City and County an independent audit...then the Controller does not have standing to conduct an audit." The Court in its ruling also extended this assessment to the Allegheny County Airport Authority, ALCOSAN, and PAT.

The crux of the Controller's argument was that the office has the right to perform an audit on any entity receiving public money (from the County) as granted to the Controller under the Second Class County Code. The Court's opinion noted that the Code grants the Controller "the general supervision and control of the fiscal affairs of the county and of the accounts of all officers or other persons, who shall collect, receive or distribute the public moneys of the county, or who shall be charged with the management or custody thereof. 16 P.S. § 4901." Of course the Controller wanted not only to perform a financial audit, but a performance audit as well and believed the Code also allows that. As was outlined in the opinion, the Controller argued that the office "may at any time require from any of them, in writing, an account of all moneys or property which may have come under their control." She was particularly interested in how the SEA distributes tickets to events at its facilities.

Of course counsel for the Authorities disagreed, claiming that the Authorities were granted operating power through state legislation wherein no specific provision was made for permitting the County Controller to perform audits. The Airport Authority and ALCOSAN were created through the Municipal Authorities Act (1945) which gave governmental auditing power to the Attorney General. The Attorney General was also granted auditing authority for the SEA which was created under Act 85 of 2000, "Second Class County Code—Omnibus Amendments". PAT was created under the Second Class

Port Authority Act which provided the Auditor General auditing powers. Of course, all Authorities must by law have financial audits carried out by the qualified firm of their choosing.

As we wrote in the aforementioned *Brief*, “the office of the Attorney General is the state’s top law enforcement officer, not an auditor. On its webpage the Attorney General’s office lists as its responsibilities and duties items such as defending the Commonwealth and its agencies in a court of law but, to no one’s surprise, auditing authorities is not one of them.” Was the provision in the laws authorizing these three Authorities (excluding PAT which is periodically audited by the Auditor General) granting auditing power to the Attorney General rather than the Auditor General—which presumably should be able to audit any agency receiving state funds—done deliberately to limit governmental scrutiny or was it merely a typographical error? Since it happened in two different Acts, the latter possibility seems very unlikely. Indeed, it would be interesting to learn whether the Attorney General’s office ever performed an audit of an authority.

The Court’s opinion is that the Legislature specified the Attorney General to have the primary auditing power and the best the Controller can do is review any fiscal audits that are performed for the Authorities. Quoting the court ruling: “That the legislature gave the controller only a back-up or provisional right to audit and gave the Attorney General the principal right to audit leads this court to the conclusion that the Controller cannot conduct an audit outside of the Municipalities Authority Act...” That quote was in reference to the Airport Authority, but similar conclusions were made regarding ALCOSAN, PAT, and the SEA. The ruling notes that “the general powers granted to the controller by the Second Class County Code cannot override the specific auditing structure the Legislature has created. 1Pa C.S.A. § 1933.”

Of course that is the strict legal interpretation, which is of course correct. The Legislature created these Authorities and gave the oversight power to state level officials, the Attorney and Auditor Generals. They did not include local oversight. However there is an easy fix: the Legislature can amend these Acts to give auditing power to the Auditor General, the county controller, or both, especially in the cases where the power is currently limited to the Attorney General, who would probably never become involved unless possible criminal activity was taking place. Indeed, involvement of the Attorney General would almost certainly be perceived to be an investigation.

First and foremost, transparency would be the main reason for allowing this move. The crux of this lawsuit was the Controller’s desire to examine the awarding of tickets by the SEA. Were the recipients politically connected and were they given as favors or rewarding past support? Was there any quid pro quo, whether explicit or not? The public has a right to know.

In the opinion, one judge stated in regard to the Acts, “the Legislature has created several layers of safeguards to assure the public that government funds and assets are being used wisely.” But the ultimate “safeguard” was placed in the hands of the Attorney General,

not exactly the greatest accounting and auditing expert. And as noted above, any audit by an Attorney General would likely be viewed as a signal that there were suspicions of questionable behavior.

In short, the current law regarding the creation of the SEA and the other Authorities needs to be amended to include granting auditing powers to the Auditor General and the local Controller. Simple modifications in one sentence would be all that is required. Why should there be any hesitation to offer the requisite amendment language and bring it to a vote?

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