POLICY BRIEF

An electronic publication of
The Allegheny Institute for Public Policy

November 10, 2009 **Volume 9, Number 68**

County Council Oversteps Yet Again

Against the opinion of their own legal counsel and in the face of a threatened veto, County Council—on a 14 to 0 vote—passed legislation to impose service fees on certain tax-exempt, non-profit institutions. Last week's legislation was another in a lengthening list of acts of civil disobedience and oath violation. Council members are sworn to uphold, defend and obey the laws of Pennsylvania, something they have been all too willing to forget while passing a County smoking ban, enacting a fatally flawed bracket assessment scheme, ignoring a Court order to fix assessments and passing the base year plan that has been ruled unconstitutional. They also violated the County Charter when they voted to place an advisory referendum concerning the Drink Tax on the ballot. All of which had the support of the Chief Executive.

On this occasion however, in a fortunate development for County taxpayers and targeted tax-exempt organizations who will not have to pay court costs and attorneys for the inevitable lawsuit, the Chief Executive vetoed the bill almost before the ink was dry citing the illegality of the service fee. The fee was slated to raise $200 on every 1,000 square feet of structures annually on parcels declared tax-exempt.

The rationale that the levy proposed by Council was a fee for service and not a real estate tax was patently absurd. Fees are charged for particular services in direct relation to the amount of service being provided. That's what the Council's Budget and Finance Committee was told by a representative speaking for their legal counsel at a hearing in March of 2008. According to the meeting minutes he said "according to case law, fees must be related to a specific service rendered…Council should carefully consider the definitions of a fee and a tax…a fee is for services provided and a tax is meant to raise revenue for the operation of a government". The Council's ordinance claimed the County is providing essential services to these tax-exempt properties such as public safety, public transportation, and public works. This argument is obviously farfetched since the fee proposed was to be based on the square footage of the tax-exempt buildings rather than on any direct measure of services used.

For the most part, municipalities provide fire and police protection to those institutions located within their borders. In fact, many universities have their own police departments. County police and sheriffs are respectively primarily responsible for the airport and parks or are arms of the courts. Any direct contact they may have with hospitals and universities would be minimal.

The argument that tax-exempt institutions should be charged a fee for using public works services is also not persuasive. Many of the roads used by employees of these organizations in getting to work are maintained by the City or state. Even when they use County maintained roads they are likely paying real estate taxes on their own homes and are certainly paying gasoline taxes, the primary source of revenue for road and bridge maintenance.

In addition, for the last couple of years the County's required contribution to public transportation has been raised through the drink and car rental taxes. These taxes were promoted as a much needed dedicated funding stream for public transportation allowing the County to use property tax receipts for other government functions. And according to a court opinion, another instance where a County action was challenged and overturned, drink tax revenues are not fungible and must be used for mass transit only.

As further evidence of the preposterous nature of the proposal, the ordinance even contained a section defining what types of tax-exempt property would be subject to the tax. Churches, charitable organizations, publicly-owned property and elementary and high schools would be exempt, while universities and hospitals would not. Further, the bill waded into a potential legal quagmire by exempting City authorities but not County authorities (at least two, Sports and Exhibition and ALCOSAN, are joint City-County authorities). This provision alone would have undoubtedly been challenged in court and struck down.

But at least one Council member felt the service fee bill would have been worthwhile even if rejected by the courts, insinuating at the same March 2008 meeting that the statewide ban on smoking would not have happened "…if County Council did not approve [its own] smoking ban which at the time was deemed illegal". Pure speculation and irrelevant. How does a struck down County ordinance possibly encourage state legislation? The interests of the County should be made known to the Legislature in a far superior fashion.

If Council wants to change state legislation affecting the County, regardless of the subject, they need to do work with state lawmakers to have their concerns addressed. Passing legislation that flouts state law or court rulings is not the good governance voters hoped for when they approved the adoption of home rule.

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