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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

DEPUTY WHIP
APPROPRIATIONS
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MEMO

To: Members of the House of Representatives

From: Representative Tom Killion 

Date: January 12, 2011

Subject: Legislation – District Justices as Arbitrators (former House Bill 126)

In the near future I intend to reintroduce legislation to amend 42 Pa.C.S. § 3304, Acting as collection agent or paid arbitrator prohibited. Currently, the law provides that district justices are prohibited from acting as agents in the collection of claims or judgments and from performing the duties of a compensated arbitrator.

In the mid-1970's, pursuant to then-recent Constitutional authorization, the General Assembly consolidated all existing statutes pertaining to the judiciary into the Judicial Code, Title 42, of the Pennsylvania Consolidated Statutes. As part of the codification effort, attempts were made to conform and modernize the language of statutes enacted over hundreds of years.

One of the statutes codified was the Act of April 14, 1834, P.L. 333, as amended by Act of April 2, 1963, P.L. 11, No. 8, which prohibited certain judges from acting as compensated arbitrators. This Act became the basis for 42 Pa.C.S. § 3304. In its original form, the Act of April 14, 1834, as amended, prohibited judges of courts of record from acting as compensated arbitrators. However, when codified in the mid-70s, the language was changed to include not only "courts of record," but also magisterial district justices, which, of course, are not courts of record. Interestingly, despite the substantive inclusion of magisterial district justices, the official source note simply states that the language was a "generalization" and not an expansion or substantive change. The resultant effect of this codification over time has been confusion over whether district justices are currently permitted to sit as compensated arbitrators in cases that are not within their jurisdiction.

While it certainly makes sense that the law should prohibit a common pleas judge from sitting as a private arbitrator over a case, as this would result in the judge being compensated twice for doing the same job. This same sort of conflict does not occur with respect to the great number of civil

cases that do not fall within a district justice's statutory jurisdiction in civil matters. Moreover, attorney magisterial district justices are not limited in the practice of law to the same degree as common pleas judges.

To prohibit district justices from sitting on arbitration panels would have a negative effect on the civil justice system. Most, if not all, counties have mandatory arbitration of civil actions pursuant to 42 Pa.C.S. § 7362 and Pa.R.C.P. No. 1301, et seq. At a time when the push is to encourage arbitration in an effort to provide for the prompt and efficient resolution of civil disputes, the confusion resulting from the existing statute has the effect of prohibiting otherwise competent, experienced and available attorney magisterial district justices from contributing to the effective operation of the civil justice system.

The proposed amendment to the Judicial Code would clarify that magisterial district justices may sit as compensated arbitrators, except in cases which originate in his or her magisterial district court. The proposed amendment also makes clear that existing court rules governing district justices are unaffected by the clarification so that if any actual or perceived conflict of interest is present, naturally, the attorney magisterial district justice would not be permitted to participate as an arbitrator in the case.

If you are interested in co-sponsoring this legislation please contact Alison Hagler at 772-0855 or through GroupWise at ahagler@pahousegop.com. Thank you in advance for your consideration.

THK: ash

Previous co-sponsors: BARRAR, BEYER, CALTAGIRONE, DENLINGER, FAIRCHILD, FLECK, GEIST, MICCARELLI, REICHLEY, SIPTROTH, STERN, MURT, and WANSACZ