

Ethics Commission and Municipal Authorities

Prime Sponsor: Senator Blake

Senate Bill 341 of the 2015-2016 Session (Passed Senate 50-0 on September 28, 2016)

Previous Cosponsors: Blake, Eichelberger, Folmer, Teplitz, Fontana, Farnese, Vulakovich, Vance, Yudichak, Schwank, Costa, Boscola, Rafferty and Browne

As you may recall, the Senate Local Government Committee held hearings in the fall of 2012 to examine the financial situation surrounding the Harrisburg Authority and its relationship to the fiscal distress of the City of Harrisburg. The hearings were in response to a forensic audit which cast serious doubt on the ability of current state laws to protect communities against transactions which threaten their fiscal stability. Several state laws designed to prevent unsound projects and borrowing were called into question by the hearings, including laws pertaining to performance bond requirements and conflict of interest prohibitions.

While much of the information presented at the hearings centered on the provisions of the Local Government Unit Debt Act (53 Pa.C.S. §§ 8001-8049), the findings of the forensic audit and the testimony from the two (2) hearings also touched on certain aspects of the Public Official and Employee Ethics Act (the "Ethics Act") and the Municipal Authorities Act of Act 1945 ("Municipal Authorities Act").

The Ethics Act, Act 93 of 1998, Chapter 11, 65 Pa.C.S. § 1101 *et seq.*, replaced the prior ethics acts and became effective December 14, 1998. The Ethics Act provides that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. The Ethics Act was passed to strengthen the faith and confidence of the people of Pennsylvania in their government. The Pennsylvania State Ethics Commission administers and enforces the provisions of the Ethics Act and provides guidance regarding its requirements.

Title 53 Pa Municipality Authorities Act of 1945 contains a provision that is unique in PA statutes. Section 5614(e) of Title 53 states that any contract entered into by an authority where there is such a conflict of interest is void. The said provision does not seem to be geared at going after the member or officer or employee of the authority who has the conflict. There is no enforcement mechanism against the offender in the Municipality Authorities Act. As such, the Ethics Commission has taken the position that the current statute does not grant it jurisdiction to investigate and enforce Section 5614(e) matters:

http://www.pennlive.com/midstate/index.ssf/2012/06/2nd_former_harrisburg_authorit.html.

We plan to re-introduce Senate Bill 341 of the 2015-16 session, which would specifically incorporate a reference to the Municipal Authorities Act (Title 53) section in the Ethics Act (Title 65) as one of the prohibited conflict of interest acts and would empower appropriate agencies with enforcement and prosecution powers. This would confer explicit jurisdiction upon the Ethics Commission to get involved if the need arises.

Finally, this legislation would amend Title 53 Pa. Consolidated Statutes to require proceeds from borrowing under the Local Government Unit Debt Act shall not be used for any purpose unrelated to the project for which the debt was incurred, nor placed in any account used by the authority or any other local government unit for any unrelated purpose.