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Municipal Newsletter

Fall 2010

Leventry, Haschak & Rodkey, LLC is pleased to present our quarterly municipal newsletter to not only our Municipal and Authority clients, but also to municipalities and authorities of the counties we serve: Cambria, Somerset, Westmoreland, Indiana and Bedford. Our regular quarterly newsletter is sent to individuals and groups containing general information, this newsletter, however, is specifically concentrated to the needs and concerns of those individuals and entities with local government affiliations. Before proceeding with this newsletter (our first Municipal Newsletter), we would like to introduce our readers to our firm and the attorneys who comprise our Municipal Department.

Our firm has extensive experience serving as solicitor for numerous municipal agencies and authorities since the firm was founded in 1983. We are a firm known for quality work. We have worked very hard to establish a firm of experienced and dedicated attorneys and support staff. We represent numerous governmental entities, some of our area's largest businesses and scores of individual clients. As solicitor for many governmental agencies and authorities we have a comprehensive background with union negotiations, lease writing, procurement issues, insurance issues, eviction proceedings, litigation, grievance arbit-

ration, board meetings, sewer and water issues, municipal law, zoning and appeals processes, tax assessment appeals, bids, quiet title issues and general governmental legal services. We augment our seven (7) attorneys' capabilities to research issues, draft documents, meet deadlines and attend meetings or training sessions by employing one (1) part-time lawyer, a support staff comprised of twelve (12) secretaries and three (3) paralegals. (Total staff, 23 people)

Our firm serves as solicitor for the Johnstown Housing Authority; the Snake Spring Township Municipal Authority; the Geistown Borough Zoning Hearing Board; Paint Township Zoning Hearing Board; the West Providence Township Sewer Authority; Napier Township; Bolivar Borough; Cherry Tree Borough; Johnstown Lease Housing Corporation; Fairfield Township; Laurel Mountain Borough; Tri-County Sewer Authority (Indiana); New Enterprise Municipal Authority; Highland Sewer Water Authority; Hastings Area Municipal Authority; Dale Borough; the Johnstown Cambria County Airport Authority; the Cambria County Fair; and the Pennsylvania State Educational Association. Attorney Randall C. Rodkey also currently serves as assistant solicitor for Cambria County.

Contact Information

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Timothy C. Leventry is the managing partner of Leventry, Haschak & Rodkey, LLC. He is a 1978 graduate of the Pennsylvania State University School of Business with a major in Finance. He is a 1981 graduate of the Delaware Law

School of Widener University with a Juris Doctor Degree and a 1982 graduate of the Georgetown University School of Law with a Legal Masters Degree in Taxation and Estate Planning.

Mr. Leventry is admitted to practice before the Pennsylvania Courts of Common Pleas, the Pennsylvania Superior Court, the Pennsylvania Commonwealth Court, the Pennsylvania Supreme Court, the United States District Courts of the Western District of Pennsylvania and New York, the United States Tax Court and the United States Supreme Court.

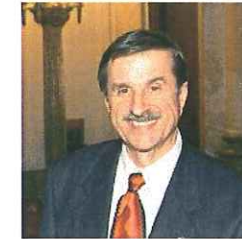
Mr. Leventry is Solicitor for Snake Spring Township Municipal Authority, Geistown Borough Zoning Hearing Board, Napier Township, the West Providence Township Sewer Authority, Johnstown Housing Authority, Cambria County Airport Authority, Paint Township Zoning Hearing Board and Johnstown Lease Housing Corporation.



John M. Haschak is a 1994 graduate of the University of Pittsburgh with a Bachelor of Science Degree in Biochemistry and a 1997 graduate of the University of Pittsburgh School of Law with a Juris Doctor Degree. He is admitted to practice before all

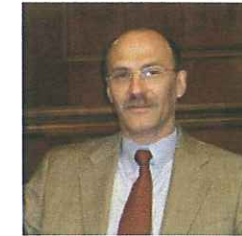
Pennsylvania Courts, the United States District Court for the Western District of Pennsylvania, the Western District of Pennsylvania Bankruptcy Court and the United States Patent and Trademark Office. Mr.

Haschak is Solicitor for the Hastings Area Sewer Authority and the West Providence Township Sewer Authority.



Randall C. Rodkey is a 1965 graduate of Lehigh University with a Bachelor of Science Degree in Economics and a 1968 graduate of University of Pittsburgh School of Law with a Juris Doctor Degree. Mr. Rodkey is admitted to practice before all Pennsylvania

Courts. He is currently the regional Attorney for the Pennsylvania State Education Association, Borough of Dale, Highland Sewer and Water Authority and Assistant Solicitor for Cambria County.



Jeffrey W. Miller is a 1988 graduate of St. Vincent College with a Bachelor of Arts Degree in Political Science and a 1991 graduate of Capital University Law School with a Juris Doctor Degree. Mr. Miller is admitted to practice

before the Supreme Court of Pennsylvania and the United States District Court for the Western District of Pennsylvania as well as courts in Pennsylvania of local jurisdiction. Mr. Miller is currently the Solicitor for Fairfield Township, Laurel Mountain Borough in Westmoreland County, Tri-Community Sewer Authority in Indiana County and Cherry Tree Borough in Cambria County.

Right-to-Know Law

Right-to-Know Law requests for public records is an issue we have been encountering more and more in our municipal work. Section 1382 of The Municipal Records Act, (53 Pa.C.S.A. § 1381 *et seq.*), identifies public records to be any papers, books, maps, photographs graphs or documentary materials, re-

ardless of physical form, made or received by an entity under law or in connection with the exercise of its power and the discharge of its duties. As it now stands, any information that documents a transaction or activity of an agency and any information created or received by another business is considered public record. It is these public records, as well as any and all information transferred from one party to another, that the public has the right to know.

The Right-to-Know law provides that a municipality shall have a written policy, certain forms in place and a Right-to-Know Officer named as of January 1, 2009. If your municipality has not yet adopted a policy, Leventry, Haschak & Rodkey, LLC can assist you in preparing and adopting the required policy.

Of particular concern as to what can be considered public records are electronic transmissions, namely e-mails, which are sent and received during the ordinary course of a municipal authority's or public entity's business. However, there are exceptions to electronic transmissions falling within the sphere of being public records, and therefore exempted from the public's right to know. According to Section 67.305(a) of the Right-to-Know Law (65 P.S. § 67.102 *et seq.*), these exemptions are:

1. The e-mail fits one of thirty statutory exceptions (as identified in §67.708);
2. The e-mail is protected by a legal privilege; or
3. The e-mail is otherwise exempted from disclosure under some other federal or state law, regulation or court order.

In addition, to safeguard against any potential embarrassment when a request for public records is made and the electronic transmissions do not fall under of the aforementioned exemptions, the entity can adopt a Record Retention and Document Destruction Policy. This Policy outlines the certain criteria for dealing with how long municipal documents should

be kept and what documents should be permanently deleted on a regular basis, i.e.. monthly, bi-monthly, etc. The respective agency adopting such a Policy may print e-mail criteria that pertain to the municipal issues at hand and delete the electronic files off the system, only maintaining the hard copies in an associated file in accordance with the Policy.

It is acceptable to e-mail another board member to ask a question or to bring up an idea that should be discussed during a meeting. However, it is never advisable to have a full discussion through e-mail. It is too risky to maintain certain conversations that could be retrieved later. We recommend a policy of regularly deleting messages that are in fact not worth keeping. One reliable policy concerning electronic transmissions is to avoid personal conversations and remain on the subject without personal commentary or opinion.

It should also be noted that e-mails are not the only electronic files that may be requested as public records. In this age of technology, numerous people are using other electronic devices to communicate, such as cell phones, Blackberries, iPhones, etc. These items would also be considered public records if dealing with municipal issues. The most important factor to remember is deleting messages that are personal, because if the records are requested by the Office of Open Records for a certain time period, there is no way to get rid of those personal messages that were delivered within the relevant time frame without violating the Act.

Eminent Domain

The Pennsylvania Eminent Domain Code clearly establishes that passage of title takes place between condemnee and condemnor at the time a declaration of taking is filed but specifies that possession does not occur simultaneous with this event. *Appeal of Hawk Sales Company*, 394 A.2d 657 at 661 (Pa. Commw. 1978) *citing* 26 Pa. C.S.A. § 302 (a)(2).

Rather, the condemnor's right to possess the property being taken ripens at the time they pay or make an offer to pay the estimated amount of just compensation. *Id.* Though recodified since this court decision, the following pertinent law regarding transfer of possession remains unchanged:

“The condemnor, after the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, shall be entitled to possession or right of entry upon payment of or a written offer to pay to the condemnee the amount of just compensation as estimated by the condemnor.”

26 Pa. C.S.A. § 307 (a)(1)(i) (emphasis added). One should note, however, that one situation where possession can pass without payment or a written offer thereof is where the condemnor has the right to assess the property for benefits, including for installation of a sewer or other public improvement towards the parcel. 26 Pa. C.S.A. § 307 (a)(1)(ii).

In addition to plainly specifying that possession passes with the payment or offer of just compensation, the applicable portion of the Eminent Domain Code addressing the issuance of a writ of possession clearly sets forth the same as an option only where a condemned party refuses to give possession or access. 26 Pa. C.S.A. § 307 (a)(1)(iii). More particularly, a condemnor in a situation such as this is directed to praecipe the court to issue a rule as to why a writ of possession should not be entered. *Id.* The Commonwealth Court interpreted the Section as the “process by which the condemnor may compel the condemnee to deliver up possession.” *Appeal of Hawk* at 661-662 (emphasis added). The Code and precedent law clearly provide that this option is available but do not specify its application in every eminent domain case.

Should a party take issue with the just compensation being paid or offered, their legal remedy is to file a petition requesting the appointment of a board of

three viewers to review the amount. 26 Pa. C.S.A. § 502. In the case of a sewer system installation, it is interesting that this same remedy of petitioning for a board of reviewers for the purpose of evaluating the value of the cost to be assessed towards a property owner for the benefit of the sewer to their property is applied. *Upper Moreland - Hatboro Joint Sewer Authority v. Wilson*, 18 Pa. D.& C.2d 171 at 173-174 (Pa. Com. Pl. Montgomery 1958). As such, should a property owner challenge the offer of payment for condemnation via the benefit they are receiving for having the sewer line, any disputes would be mutually linked and could be addressed by the same board of viewers.

Conclusions

The preceding information presented to you for your information is rudimentary information and is not necessarily conducive to all situations. Because each municipal government and authority is different, this information is merely a basis to consider. Anyone with specific issues should always consult an attorney. This newsletter should in no way be considered a substitute for the legal services only an attorney can sufficiently provide.

To our existing clients, we hope you find the information in this newsletter helpful. To other recipients, our firm is prepared to offer assistance to your organization or solicitor, if requested. One of the contacts listed on the bottom of page one (1) will be glad to answer questions you may have. Thank you for your consideration.