

policy and scope, states the declared policy of the Commonwealth of Pennsylvania:

16 P.S. § 2399.2. Findings, declaration of policy and scope

(a) It is hereby determined and declared as a matter of legislative finding:

(1) That the health, safety and general welfare of the people of this Commonwealth are directly dependent upon the continual encouragement, development, growth and expansion of business, industry, commerce and tourism within this Commonwealth.

Section 2399.3 of the Act, relating to definitions, provides:

The following words and phrases when used in this subdivision shall have the meanings given to them in this section unless the context clearly indicates otherwise or unless there is a specific definition in another section:

“Authority” or “Third Class County Convention Center Authority” shall mean an agency and public instrumentality of the Commonwealth and a body politic and corporate created pursuant to this subdivision.

Further, Section 2399.5 of the Act, relating to purposes and powers, provides:

(a) An authority created under this subdivision shall be a public body, corporate and politic, exercising public powers of the Commonwealth as an agency and instrumentality and shall be for the purpose, without limitation, by itself or by agreement in cooperation with others, of acquiring, holding, developing, designing, constructing, improving, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, leasing or subleasing, either in the capacity of lessor or lessee or sublessor or sublessee, and owning a convention center, or parts thereof.

B. Analysis

The Act is clear that authorities created pursuant to its terms, including the Authority, are Commonwealth instrumentalities and not entities governed by local laws, including home rule charters. An authority created under the Act “shall be a public body, corporate and politic, exercising public powers of the Commonwealth as an agency and instrumentality [thereof]”

16 P.S. § 2399.5. The Supreme Court of Pennsylvania has answered this question as well as it pertains to authorities created pursuant to the Municipal Authorities Act. *See* Advisory Op. No. 4, p. 2 and cases cited therein.

The Board references Mr. Spencer and Ms. Kelleher to Advisory Opinion No. 4 (December 4, 2006) and Advisory Opinion No. 9 (April 3, 2008), both concerning the inapplicability of the Charter and Administrative Code to Commonwealth authorities.¹ The Charter Board stated in Advisory Opinion No. 4:

Municipal authorities created under the Municipality Authorities Act, 53 Pa. C.S. § 5601, *et seq.*, or by similar or prior acts, are considered agencies of the Commonwealth and are not considered an instrumentality of local municipalities. *See Commonwealth v. Erie Metro. Transit Auth.*, 444 Pa. 345, 348, 281 A.2d 882, 884 (1971) (affirming that authorities created under the Municipality Authorities Act are agencies of the Commonwealth for purposes of statutory sales and use tax exemptions); *Whitemarsh Township Auth. v. Elwert*, 413 Pa. 329, 332, 196 A.2d 843, 845 (1964) (indicating that such authorities are state instrumentalities for purposes of assessing the construction cost of a sewer system); *PennDOT v. Wilksburg Penn Joint Water Auth.*, 740 A.2d 322, 324 (Pa.Cmwlth.1999) (finding a water system formed pursuant to the Municipality Authorities Act to be a state instrumentality); *London Grove Township v. Southeastern Chester County Refuse Auth.*, 102 Pa.Cmwlth. 9, 14, 517 A.2d 1002, 1004 (Pa.Cmwlth.1986) (finding a refuse authority organized under the Municipality Authorities Act exempt from the township's zoning laws as a Commonwealth instrumentality); 53 Pa. C.S. § 5505 (relating to parking authorities). The Charter and the Administrative Code are not applicable to municipal authorities created pursuant to statewide legislation.

Advisory Op. No. 4, p. 2. This conclusion is equally as applicable to authorities created pursuant to the Act as it is to authorities created pursuant to the Municipal Authorities Act or the Urban Redevelopment Law.

¹ Advisory Opinion No. 4 concerned the applicability of the Administrative Code to authorities created pursuant to the Municipality Authorities Act, 53 Pa. C.S. §§ 5601, *et seq.*. Advisory Opinion No. 9 concerned the applicability of the Charter to authorities created pursuant to the Urban Redevelopment Law. 35 P.S. §§ 1701, *et seq.*

Furthermore, relating to the \$50 payment made to each Authority member for meeting attendance, Section 2399.11(c) of the Act specifically provides that, “[s]ubject to such aggregate per annum limitation and other rules and regulations as the board shall determine, a member shall receive one hundred dollars (\$100) per board meeting.” Thus it appears that this statewide legislation, creating a Commonwealth agency and instrumentality, specifically permits such payment in an amount more than the Authority currently pays.

III. OPINION OF THE BOARD

The Opinion of the Board is that the Charter and Administrative Code has no application to the Authority and it is not a City board or commission. Administrative Code Section 1-199.01 does not prohibit, and cannot prohibit, the \$50 compensation paid to members of the Authority.

CITY OF READING CHARTER BOARD

By: *Susan T. Gibson*
Susan Gibson, Chair

Date: *April 29, 2009*