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Statutory Construction - The Outdoor Advertising Control Act - Legal Status of Townships

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STATUTORY CONSTRUCTION—THE OUTDOOR ADVERTISING CONTROL ACT—LEGAL STATUS OF TOWNSHIPS—The Supreme Court of Pennsylvania held that the “incorporated municipality” exception is not available to billboards erected in townships.

Patrick Media Group, Inc. v. Department of Transportation, 620 A.2d 1125 (Pa. 1993).

In 1989, Patrick Media Group, Inc. (“Patrick Media”) applied to the Pennsylvania Department of Transportation (“PennDOT”) for a permit to erect an outdoor advertising sign on property located in Ohio Township.¹ The proposed commercial advertisement would have been located within 600 feet of the nearest edge of the right-of-way of Interstate 279.² Pursuant to the Outdoor Advertising Control Act of 1971,³ PennDOT denied Patrick Media’s application for a permit.⁴

The Outdoor Advertising Control Act of 1971 (“OAC Act”) prohibits the construction of outdoor advertising devices⁵ within 660 feet of the right-of-way of interstate highways.⁶ The OAC Act contains an exception, however, that allows signs to be erected in com-

1. *Patrick Media Group, Inc. v. Department of Transp.*, 597 A.2d 274, 275 (Pa. Commw. Ct. 1991), *rev’d*, 620 A.2d 1125 (Pa. 1993). Permit applications for outdoor advertising devices are governed by 67 PA. CODE § 445.6 (1992).

2. *Patrick Media*, 597 A.2d at 275. Interstate 279 is a portion of the national system of interstate and defense highways, as officially designated by the United States Secretary of Transportation.

3. PA. STAT. ANN. tit. 36, § 2718.101 (Supp. 1993).

4. *Patrick Media*, 597 A.2d at 275.

5. Section 2718.103 (5) of the OAC Act provides that “Outdoor Advertising Device shall mean any outdoor sign, display, light, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform.” PA. STAT. ANN. tit. 36, § 2718.103(5) (Supp. 1993).

6. PA. STAT. ANN. tit. 36, § 2718.104 (1993). The OAC Act was a legislative response to the Federal Highway Beautification Act of 1965, 23 U.S.C. § 131 (1965). The Federal Highway Beautification Act was intended to protect the public investment in the interstate and primary highway system, to promote the safety and recreational value of public travel, and to preserve our nation’s natural beauty. *Patrick Media*, 597 A.2d at 276. It provided the United States Secretary of Transportation with authority to reduce by ten percent the amount of federal-aid highway funds being allocated to states that have not limited the construction of advertising signs within 660 feet of the right-of-way of interstate and primary highways. *Id.*

The OAC Act was intended by the Pennsylvania legislature to protect the commonwealth’s interest in receiving federal-aid funds, and, at the same time, to further the national policy of highway beautification. *Id.* at 277. Its primary goal was to limit the proliferation of advertising signs and billboards alongside the commonwealth’s highways. *Id.*

mercially or industrially zoned areas within the boundaries of incorporated municipalities.⁷ To qualify under the "incorporated municipality" exception, the proposed billboard location must be located within the boundaries of an "incorporated municipality" as such boundaries existed on September 21, 1959.⁸ The exception requires the applicant to consider the boundaries only as they existed on September 21, 1959, and to essentially disregard current municipal boundaries.⁹ If the proposed site was not located within an "incorporated municipality" on September 21, 1959, then the exception is unavailable.¹⁰

In *Patrick Media*, the hearing officer held that on September 21, 1959, Ohio Township was a second-class township.¹¹ The hearing officer also ruled that the area of the proposed sign location was zoned to be residential on September 21, 1959.¹² Consequently, the hearing officer issued an order denying Patrick Media's application, concluding that the proposed sign did not qualify under the exception to the OAC Act on the ground that second-class townships are not "incorporated municipalities" according to PennDOT regulations.¹³ The hearing officer also concluded that the proposed sign did not qualify under the second exception because the proposed location was within an area zoned residential on September 21, 1959.¹⁴

Patrick Media filed exceptions to the order, but PennDOT's Sec-

7. PA. STAT. ANN. tit. 36, § 2718.104(1)(v) (Supp. 1993).

8. Section 2718.104 provides in part:

To effectively control outdoor advertising, while recognizing it to be a legitimate commercial use of property and an integral part of the business and marketing function, no outdoor advertising device shall be erected or maintained: (1) Within six hundred sixty (660) feet of the nearest edge of the right-of-way if any part of the advertising or informative contents is visible from the main-traveled way of an interstate highway or primary highway except:

(v) Outdoor advertising devices in areas zoned commercial or industrial along the interstate system and lying within the boundaries of any *incorporated municipality* as such boundaries existed on September 21, 1959 and devices located in any other area which, as of September 21, 1959 was clearly established by law as industrial or commercial.

PA. STAT. ANN. tit. 36, § 2718.104 (Supp. 1993) (emphasis added).

9. *Id.*

10. *Id.*

11. *Patrick Media*, 597 A.2d at 275.

12. *Id.*

13. *Id.* Section 445.2 of Pennsylvania Code chapter 67 defines "incorporated municipalities" as "cities of all classes, boroughs, towns and first-class townships." 67 PA. CODE §445.2 (1992).

14. *Patrick Media*, 597 A.2d at 275.

retary of Transportation denied the exceptions and affirmed the order on August 22, 1990.¹⁵ Patrick Media appealed to the Commonwealth Court of Pennsylvania.¹⁶

The commonwealth court reversed the PennDOT order and held that the exception was applicable on the basis that every "square inch of property within the Commonwealth is located within incorporated municipalities."¹⁷ PennDOT petitioned for allowance of appeal and the Supreme Court of Pennsylvania granted the appeal.¹⁸

The sole issue presented before the Supreme Court of Pennsylvania was whether Patrick Media's application to construct a sign in an industrially zoned area of a second-class township (in this case, Ohio Township) fell within the exception allowing signs to be erected in an "incorporated municipality."¹⁹ To resolve this issue, the court was compelled to define what the General Assembly intended when it used the term "incorporated municipality" in the OAC Act.²⁰

15. *Id.* Exception to any PennDOT hearing officer's report is made pursuant to 67 PA. CODE § 491.12 (1992).

16. *Patrick Media*, 597 A.2d at 276. On appeal, Patrick Media argued that PennDOT had no "rational basis" to exclude second-class townships from the "incorporated municipality" exception. *Id.*

17. *Patrick Media*, 597 A.2d at 274. The commonwealth court, in holding that second-class townships are incorporated municipalities, focused upon the power of a township to impose taxes, enact ordinances, file suits, convey property and enter contracts, as evidence of its "corporate" existence. *Id.* at 277. The court stated that since "a second-class township is as much an incorporated municipality as a first-class township," no rational basis existed to exclude second-class townships from PennDOT's definition of "incorporated municipality." *Id.* at 278. Therefore, PennDOT's regulatory definition of "incorporated municipality" was held invalid. *Id.*

18. *Patrick Media Group, Inc v. Department of Transp.*, 620 A.2d 1125 (Pa. 1993).

19. *Patrick Media*, 620 A.2d 1127. The exception, as noted, is PA. STAT. ANN. tit. 36, § 2718.104(1)(v) (Supp. 1993).

20. *Patrick Media*, 620 A.2d at 1126. When Pennsylvania passed the OAC Act in 1971 the General Assembly used specific language adopted from the Federal Highway Beautification Act, 23 U.S.C. § 131 (1965). This specific language included the use of the term "incorporated municipality." Federal regulations enacted pursuant to the Federal Act are nearly identical to the provisions used by the OAC Act. *Patrick Media*, 620 A.2d at 1128. The federal exception states that the 660 feet requirement shall not apply: "to those segments of the Interstate System which transverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959." 23 C.F.R. § 750.102(c)(3) (1993).

This statutory language is nearly identical to the OAC Act exception at § 2718.104(v). However, the OAC Act did not define the term *incorporated municipality*. *Patrick Media*, 620 A.2d at 1126. Because the OAC Act did not define incorporated municipality, PennDOT provided a definition in its regulation. *Id.* See note 13.

In Pennsylvania there are five general types of political subdivisions: counties, cities, boroughs, townships and school districts. 109 THE PENNSYLVANIA MANUAL, 521, Dec. 1989.

PennDOT argued that in construing the OAC Act provision in question, reference should be made to the Statutory Construction Act of 1972.²¹ PennDOT contended that the terms "incorporated municipality" and "municipal corporation" refer interchangeably to the same entity.²² The Statutory Construction Act contains a clear definition of the term "municipal corporation" that provides: "(1) When used in any statute finally enacted on or before December 31, 1974, a city, borough, or incorporated town. (2) When used in any statute finally enacted on or after January 1, 1975, a city, borough, incorporated town or township."²³

The OAC Act was enacted on December 15, 1971.²⁴ Therefore, PennDOT argued, reference should be made to the definition of "municipal corporation" pertaining to statutes enacted before December 31, 1974.²⁵ That definition explicitly excludes townships.²⁶

The court was uncomfortable with PennDOT's assertion that the terms "municipal corporation" and "incorporated municipality" were interchangeable.²⁷ Townships have traditionally not been considered municipal corporations.²⁸ The court noted, however, that

There is no legal entity known as an "incorporated municipality." Local governments in Pennsylvania have traditionally been classified as either "municipal corporations" or "quasi-municipal corporations," depending on their legislative charter or enabling statute. See *In Re: Milford, Middlecreek and Jefferson Boundary Line*, 28 Somerset Legal J. 237, 238-39 (1973).

21. The Statutory Construction Act, 1972 Pa. Laws 1339, § 3 (codified at 1 PA. CONS. STAT. ANN. § 1901-1991 (Supp. 1993)).

22. *Patrick Media*, 620 A.2d at 1127.

23. 1 PA. CONS. STAT. ANN. § 1991 (Supp. 1993).

24. PA. STAT. ANN. tit. 36, §2718.101 (1993).

25. *Patrick Media*, 620 A.2d at 1127. Although the OAC Act was enacted on December 15, 1971, it was amended in December of 1975. *Id.* However, the amendments did not change the provision presently at issue. *Id.* The Statutory Construction Act of 1972 provides that, when a statute has been amended, the unaltered portions of the original statute are to be construed as effective from the date of their original enactment. 1 PA. CONS. STAT. ANN. § 1901 (Supp. 1993).

26. 1 PA. CONS. STAT. ANN. § 1991 (Supp. 1993). This position is inconsistent with the Department's own definition of "incorporated municipality." See note 13. By suggesting definitions provided by the Statutory Construction Act, PennDOT encouraged the exclusion of all townships from the "incorporated municipality" exception. It is unclear why PennDOT presented an argument so inconsistent with its own regulatory definition.

27. *Patrick Media*, 620 A.2d at 1127.

28. *Id.* The Supreme Court of Pennsylvania cited *Trevorton Water Supply Co. v. Zerbe Township*, 102 A. 328 (Pa. 1917), as an early case recognizing the quasi-corporate existence of townships. *Patrick Media*, 620 A.2d at 1127. The court acknowledged that townships have historically possessed quasi-corporate powers and therefore, for purposes of the OAC Act, could be considered "incorporated." *Id.* However, the court rejected PennDOT's contention that the terms "municipal corporation" and "incorporated municipality" were interchangeable. *Id.* Instead, the court chose to define each term of "incorporated municipality" separately. *Id.*

townships have obtained extensive corporate powers and today are clearly "incorporated" political bodies.²⁹ Notwithstanding the corporate status of townships, the court rejected PennDOT's argument that the definition of "municipal corporation," as defined in the Statutory Construction Act of 1972, should be used to construe the meaning of "incorporated municipality" in the OAC Act.³⁰ Instead, the court utilized the definition of the term "municipality" as set forth in the Statutory Construction Act to construe the meaning of "incorporated municipality."³¹ The Statutory Construction Act defines "municipality" as follows: "(1) When used in any statute finally enacted on or before December 31, 1974, a city, borough or incorporated town.(2) When used in any statute finally enacted on or after January 1, 1975, a county, city, borough, incorporated town or township."³²

The court held that under the definition of the term "municipality" as set forth in the Statutory Construction Act, a township did not qualify as a municipality for purposes of the OAC Act.³³ Since townships could not be regarded as municipalities, the court held that townships could not be considered "incorporated municipalities," despite their exercise of certain powers that are quasi-corporate in nature.³⁴ Thus, the statutory provision³⁵ allowing signs to be erected in an incorporated municipality was held to be inapplicable to all townships.³⁶ Patrick Media's application for a permit was therefore denied and the decision of the commonwealth court was subsequently reversed.

To better understand the *Patrick Media* decision, one would benefit from looking at the history and jurisprudential development of local government law. In America, the incorporation of local communities into organized forms of government began in the latter half of the seventeenth century.³⁷ Municipal corporations were established by grants or charters by provincial colony gover-

29. *Id.* The court made reference to the township's powers to impose taxes, enact ordinances, file suits, convey property, enter contracts, etc. as evidence of its "corporate" existence. *Id.*

30. *Id.*

31. *Id.*

32. 1 PA. CONS. STAT. ANN. §1991 (Supp. 1993).

33. *Patrick Media*, 620 A.2d at 1128.

34. *Id.*

35. PA. STAT. ANN. tit. 36, § 2718.104(1)(v) (1993).

36. *Patrick Media*, 620 A.2d at 1128. By excluding all townships from the "incorporated municipality" exception, the court essentially invalidated PennDOT's regulatory definition.

37. EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* §1.09 (3d ed. 1987).

nors and were independent from the state legislatures.³⁸ These early municipal corporations possessed limited powers of self-government and self-regulation.³⁹

After the American Revolution, the royal prerogative of charter-granting passed from colonial governors to the state legislatures.⁴⁰ It was at this time that an important distinction developed in categorizing local governmental units. Certain governmental bodies were created solely to assist the state legislature in administrative duties.⁴¹ Historically, it was impractical for a state to be governed exclusively from the state capital.⁴² Therefore, geographic subdivisions, such as counties and townships, were created.⁴³ These forms of local government were known as "quasi-municipal corporations."⁴⁴

Quasi-municipal corporations were not as powerful or as independent as municipal corporations.⁴⁵ Quasi-municipal corporations were considered "administrative agents" of the state and existed merely to serve the state.⁴⁶ In other words, the quasi-municipal corporation was a public agency created or authorized by the state to aid the state in the administration of state-wide problems.⁴⁷ Municipal corporations, on the other hand, were created primarily

38. 1 SANDS & LIBONATI, LOCAL GOVERNMENT LAW § 1.04 (1989). During the colonial period, some twenty-four municipal corporations received charters as cities. *Id.* By 1750, chartered municipal corporations lined the Atlantic seaboard and were created as an effective instrument for stimulating commercial development and promoting trade. *Id.*

39. SANDS & LIBONATI, cited at note 38, at §1.04. The colonial municipal corporations had the authority to raise revenues by collecting import or sales duties, licensing fees, and rents from the commercial facilities (wharves and markets) which it owned. *Id.*

40. Jewell Cass Phillips, *Legal Position of Local Units of Government in Pennsylvania*, 13 TEMP. L.Q. 466 (1939).

41. 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 23 (Little, Brown, and Company 1881). Quasi-corporations, such as counties and townships, were described as "involuntary political or civil divisions of the state" created merely to aid in the administration of state government. *Id.*

42. OSBORNE REYNOLDS, JR., LOCAL GOVERNMENT LAW § 6 (1982).

43. REYNOLDS, cited at note 42; CHARLES B. ELLIOT, THE PRINCIPLES OF THE LAW OF MUNICIPAL CORPORATIONS § 10 (Callaghan and Company 1925). In sparsely populated areas, where the need for a strong local government was minimal, quasi-municipal corporations were found as the most convenient form of government. ELLIOT at § 10.

44. ELLIOT, cited at note 43, at § 10.

45. DILLON, cited at note 41, at § 29.

46. DILLON, cited at note 41, at § 30. As one commentator has stated: "A municipal corporation proper is created mainly for the interest advantage and convenience of the locality and its people. . . . [a] county [or township] organization is created almost exclusively with a view to the policy of the state at large, for purposes of political organization and civil administration." *Id.*

47. *Id.*

to serve local interests.⁴⁸

The legal genesis of the municipal corporation is rooted in ancient Rome where the "*municipium*" was a free and privileged town or city which had been granted the right of local self-government and the broad power to create its own laws.⁴⁹ In England, and later, America this power of self-government became the distinguishing characteristic of a municipal corporation.⁵⁰ This broad grant of local autonomy became the distinctive feature that segregated municipal corporations from quasi-municipal corporations. Throughout nineteenth-century America, only cities and boroughs enjoyed this corporate autonomy.⁵¹

Pennsylvania law has traditionally recognized townships as quasi-municipal corporations and not municipal corporations. Numerous decisions have held that counties and townships are quasi-municipal corporations with much less power and autonomy than municipal corporations.⁵² In *Kittaning Academy v. Brown*,⁵³ the Supreme Court of Pennsylvania attached considerable significance to the fact that quasi-municipal corporations had no legislative power and were governed directly by statutes passed in Harrisburg.⁵⁴ The court held that counties and townships can, as quasi-

48. In *City of Williamsport v. Commonwealth*, 84 Pa. 487 (1877), the Supreme Court of Pennsylvania held that:

A municipal corporation has for its object the interests, advantage and convenience of the locality and its people. A municipal corporation is a government, possessing powers of legislation and is charged with a general care for the welfare of the people; while a county organization is merely an involuntary agent of the state, charged with the interest of the state

City of Williamsport, 84 Pa. at 499.

49. In *Re: Milford, Middlecreek and Jefferson Boundary Line*, 28 Somerset Legal J. 240 (1973).

50. *Hamilton County v. Mighels*, 7 Ohio St. 109 (1857). The Ohio Supreme Court held that quasi-municipal corporations, such as townships and counties, are mere "local subdivisions of a state, created by the sovereign power of the state, without the particular solicitation, consent or concurrent action of the people who inhabit them." *Id.* at 118-19. Municipal corporations, on the other hand, are called into existence at the direct solicitation or free consent of the people who compose them. *Id.* at 119.

51. In *Shronk v. Supervisors of Penn Township*, 3 Rawle 347 (1832), the Supreme Court of Pennsylvania held that townships were not municipal corporations but rather quasi-corporations with limited corporate powers. *Shronk*, 3 Rawle at 350.

See also *City of Philadelphia v. Fox*, 64 Pa. 169 (1870), where the supreme court declared that "the city of Philadelphia is beyond all question a municipal corporation, that is, a public corporation created by the government. . . .[h]aving subordinate and local powers of legislation." *City of Philadelphia*, 64 Pa. at 180.

52. Phillips, cited at note 40, at 466.

53. 41 Pa. 269 (1862).

54. *Kittaning Academy*, 41 Pa. at 272. At issue in *Kittaning Academy* was the legal effect of a license issued by Armstrong County to erect a public building on land owned by

municipal corporations, conduct affairs as would municipal corporations, but quasi-municipal corporations are limited because they lack the authority to legislate.⁵⁵ The *Kittaning Academy* holding was consistent with the nineteenth-century notion that quasi-municipal corporations were merely "geographically organized" agents of the state and possessed only limited corporate powers.⁵⁶

In the aftermath of the Industrial Revolution, the Supreme Court of Pennsylvania was asked to reaffirm the corporate status of townships. Urban growth and industrialization had dramatically changed the role of local governments. Recognizing the need for greater control over local health and safety matters, the Pennsylvania General Assembly passed the Township Act of 1899.⁵⁷ In *Trevorton Water Supply Co. v. Zerbe Township*,⁵⁸ the Supreme Court of Pennsylvania refused to recognize townships as municipal corporations despite their increased powers.⁵⁹

the county. *Id.* The supreme court held that the construction of an academy did not constitute a public building and that Armstrong County had no legislative power to alter the original grant which had devised the property to the county. *Id.*

55. *Id.* The court stated that "because they cannot legislate, everything done by the agents of a county must be first authorized by the legislative power of the state." *Id.*

56. In *Wharton v. School Directors of Cass Township*, 42 Pa. 358 (1862), the Supreme Court of Pennsylvania enumerated that:

[S]chool districts are not strictly speaking, municipal corporations, for they have neither common seal or legislative powers, both of which are characteristic of such corporations. They are territorial divisions for the purposes of the common school laws, consisting generally of boroughs and townships. They belong to that class of quasi corporations to which counties and townships belong—exercising within a prescribed sphere many of the faculties of a corporation.

Wharton, 42 Pa. at 363.

Also, in *Union Township v. Gibboney*, 94 Pa. 534 (1880), the Supreme Court of Pennsylvania held that townships are merely involuntary civil divisions of the state created to aid the state in the administration of state government. *Union Township*, 94 Pa. at 536. In addition, the court noted that "in respect to the limited number of their corporate powers, they rank low in the grade of corporate existence; and hence, they have been frequently termed quasi corporations." *Id.* at 536-37.

57. The Act of April 28, 1899, P.L. 104. The purpose of the Township Act of 1899 is disclosed in the preamble of the Act: "In those more populous townships of the Commonwealth, which are in large measure devoted to residential purposes, there is need of a form of municipal government having greater powers than are now possessed by the local governments of townships under existing laws." 1899 Pa. Laws 104.

58. 259 Pa. 31 (1917).

59. *Trevorton*, 259 Pa. at 31. The supreme court also refused to confer municipal corporation status on townships in *Dempster v. Unified Traction Co.*, 205 Pa. 70 (1903). In *Dempster*, the court stated that the Township Act of 1899 "[did] not attempt to create a hybrid borough, neither township nor borough; it obviously intend[ed] to preserve the old township organization with all its powers and duties except where it expressly enact[ed] otherwise." *Dempster*, 259 Pa. at 78.

See also *St. Davids Church v. Sayen*, 244 Pa. 300 (1914), where the Supreme Court of

At issue in *Trevorton* was whether the supervisors of Zerbe Township had the legal authority to enter the township into a contract for a supply of water for fire protection.⁶⁰ The supreme court held that under a narrow reading of the Township Act the township did not have the authority to contract for broad police power purposes.⁶¹ Because the township could exercise only those powers expressly conferred upon it by statute, the supervisors of Zerbe Township were precluded from expanding the limited corporate powers of the township.⁶² The supreme court concluded that Zerbe Township could not unilaterally enter into a contract for water supply.⁶³ Such contracts could only be consummated upon petition of a majority of the landowners to be benefitted.⁶⁴ The township, as a quasi-municipal corporation, had no authority to act unilaterally and outside the sphere of the Township Act.⁶⁵ Accordingly, the court reaffirmed the quasi-corporate status of townships.⁶⁶

The Supreme Court of Pennsylvania addressed a similar issue in *Herrington's Petition*⁶⁷ and again affirmed the quasi-corporate status of townships.⁶⁸ The primary issue before the court was whether the term "municipal," as used in the Pennsylvania Constitution, included all government entities authorized to appropriate private property for public highways.⁶⁹ The court found that the term

Pennsylvania held that "townships of the first class are nothing more than a township, with some change in the form of government, and with some additional specified powers. They are not municipal corporations." *St. David's Church*, 244 Pa. at 302.

60. *Trevorton*, 259 Pa. at 35. The statute authorized the township supervisors, upon petition of the owners of a majority of "the lineal feet of frontage along a highway," to enter into a contract for water supply for the protection of the abutting property only, not the entire township. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Trevorton*, 259 Pa. at 35.

65. *Id.* The court cited *Haverford Township v. Wilfong*, 60 Pa. Super. Ct. 214 (1915). In *Haverford*, the superior court opined that the authority of townships under the Township Act "changed only in respect to certain express powers conferred upon the township commissioners." *Haverford*, 60 Pa. Super. at 219. Among the additional powers granted by the Township Act the court did not "find any power to legislate generally with respect to the police power." *Id.*

66. *Trevorton*, 259 Pa. at 35. The court stated that townships "are involuntary quasi-corporations, standing low in the scale of corporate existence and they can exercise only such powers as are expressly conferred upon them by statute." *Id.*

67. 266 Pa. 88 (1920).

68. *Herrington's Petition*, 266 Pa. at 88.

69. *Id.* at 89. Article XVI, § 8 of the Pennsylvania Constitution stated at the time that "[m]unicipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways, or improve-

"municipal" included only those municipalities which possess "local and subordinate powers of self-government."⁷⁰ Townships, the court held, possess and exercise only such powers as are granted by the General Assembly and are not municipal corporations.⁷¹ The court noted that the Township Act of 1899 was intended to give residential and urban townships greater powers to effectively confront residential problems.⁷² The greater powers, however, did not elevate the status of townships to that of boroughs or cities.⁷³ Townships still lacked any ability to legislate beyond the parameters established by the Township Act.⁷⁴ This, the court remarked, distinguished townships from true municipal corporations such as boroughs and cities.⁷⁵ Because a township did not possess the attributes of local self-government, the court excluded it from the definition of "municipal" as enumerated in the constitution's eminent domain clause.⁷⁶

After *Trevorton* and *Herrington*, it was a well-established principle in Pennsylvania law that townships were not municipal corporations.⁷⁷ Consequently, the Pennsylvania courts were not confronted with many issues pertaining to the corporate status of townships.⁷⁸ It was not until the early 1970's that the status of townships began to change.

With the passage of the Home Rule Charter and Optional Plans Law⁷⁹ ("Home Rule Charter") in 1972, the corporate status of townships became less significant.⁸⁰ Under the Home Rule Charter,

ments." PA. CONST. art. XVI, § 8 (repealed 1966, current version at PA. CONST. art. 10, § 4).

70. *Herrington's Petition*, 266 Pa. at 93.

71. *Id.*

72. *Id.* at 91-92.

73. *Id.* at 92.

74. *Herrington's Petition*, 266 Pa. at 92.

75. *Id.*

76. *Id.* See note 69.

77. See *Georges Township v. Union Trust Co.*, 293 Pa. 364 (1928), where the Supreme Court of Pennsylvania distinguished townships from true municipal corporations such as cities and boroughs. The court held that "townships, like any other quasi municipal body, may act only through powers that have been conferred on them by the legislature" *Georges Township*, 293 Pa. at 368.

78. A lower court stated that "the distinction between true municipalities or municipal corporations, and the quasi municipalities, is now well established and legally recognized. Thus townships, whether of the First or Second Class, are not municipal corporations but only quasi-municipal corporations, and are therefore not municipalities." In *Re: Milford, Middlecreek and Jefferson Boundary Line*, 28 Somerset Legal J. 238 (1973).

79. Home Rule Charter and Optional Plans Law, PA. STAT. ANN. tit. 53, § 1-101 (1974).

80. To allow local municipalities flexibility in the organization and operation of municipalities, the Pennsylvania Constitution was amended in 1968 to provide for the adoption

all municipalities in Pennsylvania were permitted to adopt charters as a source of authority for home rule legislation and alterations in local government structure.⁸¹ More importantly, the Home Rule Charter defined "municipality" to include counties, cities, boroughs and townships.⁸² Now, for the first time, townships and counties were granted the broad power of self-government and limited autonomy.⁸³ The historical and traditional distinction between municipal corporations and quasi-municipal corporations was becoming less apparent. By the mid-1970's, many quasi-municipal corporations, such as townships, had obtained legislative powers of such municipal character as to blur the original distinction that had contrasted the two governmental units for nearly 250 years.⁸⁴

In response to the evolving corporate status of townships, the Pennsylvania General Assembly amended the Statutory Construction Act to reflect the recent trend.⁸⁵ The amended definition of "municipal corporation" was changed to include townships.⁸⁶ In addition, the definition of "municipality" was also amended to include townships.⁸⁷ By the 1980's, Pennsylvania law had erased

of Home Rule. Article 9, § 2, as amended, provided:

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment, or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

PA. CONST. art. IX, § 2.

In order to carry out the mandate of article 9, § 2, the General Assembly enacted the Home Rule Charter and Optional Plans Law in 1972. PA. STAT. ANN. tit. 53, § 1-101 (1974).

81. Gary E. French, *Home Rule in Pennsylvania*, 81 DICK. L. REV. 265 (1976).

82. PA. STAT. ANN. tit. 53, § 1-102 (1974). The relevant definition states: "Municipality means a county, city, borough, incorporated town or township." *Id.*

This definition is also consistent with the amendment made to the Pennsylvania Constitution in 1968. Article 9, § 14 provides: "Municipality means a county, city, borough, incorporated town, township or any similar general purpose unit of government which shall hereafter be created by the General Assembly." PA. CONST. art. IX, § 14.

83. See 109 THE PENNSYLVANIA Manual 521, December 1989. See also, *County of Delaware v. Township of Middletown*, 511 A.2d 811 (Pa. 1986).

84. See *In Re: Milford, Middlecreek and Jefferson Boundary Line*, 28 Somerset Legal Journal 237, 238 (1973). The court noted that "quasi-municipal corporations have been granted many legislative powers of municipal character" and that "the original distinction between them and the municipal corporation is somewhat blurred . . ." *Id.* at 241.

85. 1 PA. CONS. STAT. ANN. § 1991 (Supp. 1993).

86. *Id.* See note 23 and accompanying text.

87. *Id.* See note 32 and accompanying text.

many of the distinctions between municipal corporations and quasi-municipal corporations. Consequently, townships were generally recognized as municipal corporations.⁸⁸

In the *Patrick Media* decision, however, the Supreme Court of Pennsylvania refused to consider townships as municipal corporations.⁸⁹ The critical issue in the *Patrick Media* case was whether a township could be considered an "incorporated municipality" for purposes under the OAC Act.⁹⁰ The term "incorporated municipality" has no legal significance in Pennsylvania because political subdivisions have been traditionally classified as either municipal corporations or quasi-municipal corporations.⁹¹ Therefore, the supreme court believed that it was compelled to utilize definitions provided by the Statutory Construction Act in order to resolve this ambiguity.⁹²

The court faced a dilemma in choosing the proper definition provided by the Statutory Construction Act. Both the term "municipal corporation" and "municipality" excluded townships as part of their definitions.⁹³ It is unclear from the decision what motivated the court in choosing the term "municipality" over "municipal corporation."

One logical explanation is that the court attempted to construe "incorporated municipality" as two distinct, independent terms. By 1992, it was generally established that townships possess a wide variety of corporate powers.⁹⁴ The court even referred to the townships' ability to impose taxes, enact ordinances, file suits and enter contracts as evidence of "corporate" existence.⁹⁵ Therefore, the court held that townships could be considered "incorporated" for purposes of the OAC Act.⁹⁶ However, when confronted with construing "municipality," the justices apparently felt obligated to use

88. See *In Re Township of Heidelberg For Footpath*, 428 A.2d 282 (Pa. 1981).

89. *Patrick Media*, 620 A.2d at 1127.

90. *Id.* at 1126.

91. See note 20 and accompanying text.

92. *Patrick Media*, 620 A.2d at 1127. The OAC Act did not define the term "incorporated municipality." See note 20. A regulatory definition was provided by PennDOT. See note 13. It is a well-known rule of statutory construction that interpretive regulations issued by the administrative agency charged with executing the particular statutory scheme are entitled great deference. 1 PA. CONS. STAT. ANN. § 1921(c)(8) (Supp. 1993). However, the supreme court chose to ignore the regulatory definition promulgated by PennDOT and mechanically applied the definition provided by the Statutory Construction Act.

93. *Patrick Media*, 620 A.2d at 1127. See notes 23 and 32 and accompanying text.

94. *Patrick Media*, 620 A.2d at 1127.

95. *Id.*

96. *Id.*

the applicable definition as provided by the Statutory Construction Act.⁹⁷ A literal reading excluded all townships.⁹⁸ Since a township could not be considered a "municipality," it could not be an "incorporated municipality" either.⁹⁹ Using this rather simplistic reasoning, the supreme court concluded that Ohio Township could not be considered an "incorporated municipality."¹⁰⁰ Because Ohio Township did not qualify as an "incorporated municipality," Patrick Media's proposed billboard would have to be 660 feet from Interstate 279.¹⁰¹ The mechanical approach taken by the Supreme Court of Pennsylvania is not consistent with the legislative intent surrounding the OAC Act. The OAC Act was enacted to promote the scenic enhancement and natural beauty of the Commonwealth's highways.¹⁰² By regulating the number, distance and size of billboards along highways, the OAC Act was designed to preserve the visual tranquility of the rural Pennsylvania countryside.

Pennsylvania law has traditionally considered townships and counties as the most effective form of local government in rural and agrarian areas.¹⁰³ One could logically argue that the OAC Act was targeted toward these rural areas because of the Act's emphasis on preserving the "natural beauty" of the commonwealth's scenic landscape. Excluding all townships from the "incorporated municipality" exception, however, is not consistent with this goal.

Townships in Pennsylvania are classified as either First Class or

97. *Id.*

98. See note 32.

99. *Patrick Media*, 620 A.2d at 1128.

100. *Id.*

101. *Id.* at 1126.

102. The purpose of the OAC Act is stated at § 2718.102 of the Act. This section states:

The people of this Commonwealth would suffer economically if the Commonwealth failed to participate fully in the allocation and apportionment of Federal-aid highway funds since a reduction in such funds would necessitate increased taxation to support and maintain the Commonwealth's road program and system. Therefore, for the purpose of assuring the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the interstate and primary systems; to promote the welfare, convenience, and recreational value of public travel; and to preserve natural beauty, it is hereby declared to be in the public interest to control the erection and maintenance of outdoor advertising devices in areas adjacent to the interstate and primary systems within this Commonwealth.

PA. STAT. ANN tit. 36, § 2718.102 (Supp. 1993).

103. *Wyoming Val. Water Supply Co. v. Public Serv. Com.*, 159 A. 340 (Pa. Super. Ct. 1932). The court remarked that the township structure "is the only recognized governmental division in this state for more sparsely settled communities." *Wyoming Val. Water Supply*, 159 A. at 341.

Second Class Townships.¹⁰⁴ The classification is based solely on population density.¹⁰⁵ First Class Townships were created to allow townships to effectively alleviate problems associated with urban development.¹⁰⁶ Consequently, First Class Townships are frequently urban areas.¹⁰⁷ On the other hand, Second Class Townships are still regarded as the primary municipal structure for rural areas.¹⁰⁸ These townships are often sparsely populated and usually possess tracts of undeveloped or farm-related land. The less densely populated Second Class Townships, therefore, also possess more "natural beauty" simply because they are less densely populated and are primarily rural. Thus, the 660 feet setback mandated by the OAC Act would seem more applicable to rural townships than commercially developed urban townships.

The supreme court, however, chose to exclude all townships from the "incorporated municipality" exception by mechanically applying the definitions provided by the Statutory Construction Act.¹⁰⁹ This rigid approach violates the practical effect of the OAC Act. By excluding all townships, the court failed to appreciate the commercial development of many First Class Townships. It is difficult to imagine what "natural beauty" is threatened by a billboard in a rapidly developing urban township. The blanket exclusion of all townships may inhibit the commercial development of some developing areas.

After the *Patrick Media* decision, only cities, boroughs and incorporated towns will be considered "incorporated municipalities" under the OAC Act. Townships are now completely excluded from this exception.¹¹⁰ The rigid and mechanical approach taken by the

104. First Class Township Code, PA. STAT. ANN. tit. 53, § 55201 (1957).

105. *Id.*

106. See note 57.

107. 109 THE PENNSYLVANIA MANUAL 524, December 1989.

108. HAROLD F. ALDERFER, CONSTITUTIONAL AND LEGAL LIMITATIONS AFFECTING LOCAL GOVERNMENT IN PENNSYLVANIA, Part II at 82. (1968).

109. It is interesting to note that *Patrick Media* appealed solely on the grounds that no "rational basis" existed to exclude second-class townships from the "incorporated municipality" exception. *Patrick Media*, 597 A.2d at 278. As a result of the supreme court's decision both first-class and second-class townships will now be excluded from the exception. What effect this will have on billboards previously erected in first-class townships is unclear.

110. According to § 2718.104 of the OAC Act all outdoor advertising devices must be 660 feet from the right of way of an interstate highway. PA. STAT. ANN. tit. 36, § 2718.104 (Supp. 1993). However, there are exceptions for devices which satisfy the following:

(IV) Outdoor Advertising devices in zoned or unzoned commercial or industrial areas along those portions of the interstate system constructed on a right of way, any part of which was acquired on or before July 1, 1956.

(V) Outdoor Advertising devices in areas zoned commercial or industrial along the

court may produce some illogical and undesired results. In essence, commercial expansion in the future will be based upon or limited by zoning laws that were in force as of September 21, 1959. If an application for a billboard is made in a township, the billboard will have to be 660 feet from the interstate highway unless the proposed location was zoned industrial or commercial as of September 21, 1959. The "incorporated municipality" exception is no longer available. An applicant must ignore the present commercial development of an area and rely solely on the commercial development as it existed in 1959. This seems illogical.

When the interstate highway system was designed in the 1950's, careful attention was given to route the highways away from commercially developed areas.¹¹¹ Many interstate highway corridors passed through exclusively rural and woodland areas. It would have been undesirable and economically impractical to construct the interstate system through commercially developed areas. As noted, townships were considered the most practical municipal structure for sparsely populated rural areas in Pennsylvania. Therefore, many interstate highways were constructed in the rural, woodland corridors of the commonwealth and these areas were usually townships.¹¹² Logic indicates that in 1959 these areas would have been zoned either agricultural, woodland or residential. They would not have been zoned industrial or commercial because many interstate highways were specifically designed to avoid urban, commercialized areas. Unless the present billboard location was zoned industrial or commercial as of September 21, 1959, the billboard must be 660 feet from the interstate. All hope must be placed on the notion that the present location was somehow zoned industrial or commercial in 1959. This is highly unlikely.

By excluding all townships from the "incorporated municipality"

interstate system and lying within the boundaries of any incorporated municipality as such boundaries existed on September 21, 1959, and devices located in any other area which, as of September 21, 1959 was clearly established by law as industrial or commercial.

PA. STAT. ANN. tit. 36, § 2718.104 (Supp. 1993).

111. See PHILLIP H. BURCH, JR., *HIGHWAY REVENUE AND EXPENDITURE POLICY IN THE UNITED STATES*, Rutgers University Press (1962). Property values increase with the intensity of land use. Thus, the cost of acquiring a right of way would be substantially higher in urban areas than in rural regions. *Id.* at 26.

112. Pennsylvania ranks fourth among the fifty states in the number of rural interstate miles. As of December 31, 1990, Pennsylvania had approximately 1,166 miles of interstate classified as rural. Only Texas, California, and Illinois have more miles of interstate classified as rural. Sallie Gaines, *The Roads that Changed America*, CHI. TRIB., Oct. 20, 1991, at 1.

exception, the Supreme Court of Pennsylvania unwittingly limited economic opportunity in the 1990's to whatever commercial growth an area had achieved more than thirty years ago. This odd circumstance could have been avoided had the drafters of the OAC Act simply defined "incorporated municipality" within the Act itself. A definition that would have included cities, boroughs, incorporated towns and first-class townships would have effectuated the legislative intent much more effectively than the inflexible course chosen by the Supreme Court of Pennsylvania. The social interests of scenic preservation must be balanced against the capitalistic forces of commercial development and economic opportunity. The *Patrick Media* decision produces a result that achieves neither of these goals.

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