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Recent Developments in Pennsylvania Constitutional Law

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CONSTITUTIONAL LAW — PROCEDURAL DUE PROCESS — The Pennsylvania Supreme Court held that a plaintiff who seeks monetary damages under the Pennsylvania Human Relations Act is not entitled to a jury trial.

Wertz v. Chapman Township, 741 A.2d 1272 (Pa. 1999).

In 1990 Sherry Wertz, who worked as a road crew laborer for Chapman Township, informed her supervisor, Fred Gummo, that she would no longer be able to lift more than twenty-five pounds because she was pregnant.[1] According to Wertz, her employer began to sexually harass her, and rather than allowing her to avoid lifting heavy objects, ordered her to do so.[2] After complaining to the Chapman Township Supervisors about the alleged conduct, who subsequently ordered Gummo to stop the behavior, Wertz claimed that the harassment only intensified.[3] Wertz was terminated from her job as a road crew laborer on May 11, 1990.[4]

Wertz' initial claims alleging violations under federal and state employment discrimination laws were dismissed in federal court as time-barred, causing her state claims to be transferred to the Clinton County Court of Common Pleas.[5] After denying Wertz' motion for a jury trial, the trial judge ruled in favor of Chapman Township, finding no violations under the Pennsylvania Human Relations Act ("PHRA").[6] The commonwealth court affirmed the

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1. Wertz v. Chapman Township, 741 A.2d 1272, 1273 (Pa. 1999). The township hired Wertz to replace her mother, who had left due to medical reasons. *Id.*

2. *Wertz*, 741 A.2d at 1273. Specifically, Wertz alleged that her supervisor, Fred Gummo, made sexually degrading remarks about Wertz, threatened to fire her, isolated her from other workers, and made unjustified complaints about her work habits. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* Specifically, Wertz' brought suit in state court alleging violations under the Pennsylvania Human Relations Act ("PHRA"). *Id.*

6. Court of Common Pleas, Clinton County, No. 793-94. Richard M. Saxton, President

trial court's denial of a jury trial, but found that the trial court had erred in excluding certain trial testimony and ordered a new trial.[7] Wertz filed a petition to the Pennsylvania Supreme Court for allowance of appeal, and the supreme court granted allocatur to decide the issue of whether Wertz was entitled to a jury trial.[8]

The Pennsylvania Supreme Court began its analysis by determining whether the language of the PHRA entitled Wertz to a jury trial, which the court held it did not.[9] In reaching that decision, the court noted that the statute itself was silent as to the subject of a jury trial, leading it to presume that if the General Assembly had wanted to grant a right to a jury trial, such language would have been expressly included in the statute.[10] Additionally, the court looked at the use of the word "court" in the statute, and indicated that this was strong evidence that a tribunal should be used to make findings under the statute, rather than a jury.[11] Finally, the court observed that no legislative history existed that would indicate that a right to a jury trial had been intended.[12]

Another argument made by the appellant was that the language of the statute provided for "legal" relief, which translated into a right to a jury trial, especially because this case involved monetary damages.[13] In response to this argument, the court opined that the use of such language in the statute did not necessarily reflect legislative intent to provide for a jury trial under the PHRA.[14]

Next, the court determined whether Wertz had a right to a jury

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Judge, issued the holding. *Id.*

7. *See* Wertz v. Chapman Township, 709 A.2d 428, 438 (Pa. Commw. Ct. 1997). Judge James J. Flaherty issued the opinion. *Id.*

8. *Wertz*, 741 A.2d at 1273. At the supreme court, attorney Jeffrey C. Dohrmann from Williamsport represented Sherry Wertz, and attorney Anthony R. Sherr from Blue Bell represented Chapman Township. *Id.*

9. *Id.* at 1274. Justice Ralph J. Cappy wrote the majority opinion, joined by Chief Justice John P. Flaherty, Jr., and Justices Russell M. Nigro, Sandra Schultz Newman, and Thomas G. Saylor. Justice Stephen A. Zappala concurred in the result. *Id.* at 1273. Justice Ronald D. Castille dissented. *Id.* at 1280-81 (Castille, J., dissenting). The court looked at the following language of the PHRA in making its determination: If the court finds the respondent has engaged in such discriminatory practices charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate. *Id.*at 1274 (quoting PA. STAT. ANN. tit. 43, § 962(c)(3) (West 1994)).

10. *Id.*

11. *Id.*

12. *Id.* at 1274-75.

13. *Wertz*, 741 A.2d at 1275.

14. *Id.*

trial under the Pennsylvania Constitution.[15] The court stated that, in accordance with applicable case law, the constitution preserved a right to a jury trial only where such a right existed for the particular cause of action at issue at the time that the Pennsylvania Constitution was adopted.[16] The court opined that jury trials were not required for discrimination cases at the time of the adoption of the Pennsylvania Constitution, and that a cause of action for sexual harassment or discrimination did not even exist at that time; therefore the appellant did not have the right to a jury trial under the constitution.[17]

Wertz then argued to the court that federal case law suggested that she be entitled to a jury trial, by submitting that federal district courts in Pennsylvania have predicted that state courts would find a right to a jury trial existed under the PHRA.[18] In looking at this issue, the court pointed out that the federal cases cited by the appellant interpreted the United States Constitution, and that a state court is not bound to apply any federal court's interpretation of the United States Constitution to a provision of the state constitution, even if the two provisions are practically identical.[19] Additionally, the court rejected the suggestion that it analyze this case in a manner similar to the examination under federal case law of the right to a jury trial under the United States Constitution, because the federal cases have a different focus than what Pennsylvania case law has historically focused on regarding the right to a jury trial.[20]

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15. *Id.* at 1275. Article 1, Section 6 of the Pennsylvania Constitution states: "Trial by jury shall be as heretofore and the right thereof remain inviolate." PA. CONST. art. I, § 6.

16. *Wertz*, 741 A.2d at 1275-76. To support this contention, the court cited to three cases; Byers and Davis v. Commonwealth, 42 Pa. 89 (1862); Appeal of Watson, 105 A.2d 576 (Pa. 1954); William Goldman Theatres, Inc. v. Dana, 173 A.2d 64 (Pa. 1961). *Id.* at 1276. The court also looked at the following three-prong test to aid in their determination: (1) was there a statutory requirement for a jury trial in the case; (2) were jury trials required in the type of proceeding at issue when the constitution was adopted; and (3) if jury trials were required, was there a common law basis for the proceedings. *Id.* (citing Commonwealth v. One (1) 1984 Z-28 Camaro Coupe, 610 A.2d 36 (1992)). Because the court had already determined that no statutory requirement existed, it turned to the second prong of the test. *Id.* at 1277.

17. *Id.* at 1277. The third prong of the test was dependent on satisfaction of the second prong, so the court did not consider the third prong in its analysis. *Id.*

18. *Id.* (citing Lubin v. American Packaging Corp., 760 F. Supp. 450 (E.D. Pa. 1991); Galeone v. American Packaging Corp., 764 F. Supp. 349 (E.D. Pa. 1991)). In making this statement, appellant conceded that the cases largely relied upon federal interpretation of the right to a jury trial under the Seventh Amendment to the United States Constitution. *Id.*

19. *Id.* at 1278 (citing Blum v. Merrell Dow Pharmaceuticals, 626 A.2d 537 (Pa. 1993)).

20. *Id.* The court noted that it has

Finally, the appellant attempted to analogize that sexual discrimination was essentially the same as the tort of personal injury or wrongful discharge, which were recognizable at common law and had a common law basis.[21] Again, the court rejected this argument, reiterating their test as to whether a right to a jury trial existed under the Pennsylvania Constitution, and stating that any sort of "analogy" argument would be contrary to prior case law from which the test was forged.[22]

Justice Ronald D. Castille dissented from the majority opinion affirming the order of the commonwealth court.[23] In his dissent, Justice Castille begins by stating that the right to a jury trial is central to the system of justice, and the fact that the PHRA remained silent on the issue should not impinge on this central right.[24] Justice Castille also disagreed with the majority's view regarding interpretation of the Pennsylvania Constitution; he believed that the majority employed a strict construction, when what the framers intended to create with the constitution was a document that could adapt and evolve with the changing needs of society, a document that would grant Wertz the right to a jury trial in her employment discrimination case.[25]

However, the majority of the Pennsylvania Supreme Court held that the Pennsylvania Constitution did not automatically grant the right to a jury trial, unless it meets the test of historical longevity created by the court. The *Wertz* decision, that an employee was not entitled to a jury trial for claims arising under the PHRA, was a

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> historically viewed the proper analysis under the Pennsylvania Constitution to consist of, inter alia, an inquiry into whether a jury trial existed for the cause of action at common law at the time of the adoption of our Constitution. Conversely, federal case law examines whether the statutory cause of action is analogous to a common law claim for which there was a right to trial by jury, with focus . . . on the relief provided.

Id. at 1278.

21. *Wertz*, 741 A.2d at 1278.

22. *Id.* at 1279.

23. *Id.* at 1280 (Castille, J., dissenting).

24. *Id.* (Castille, J., dissenting). To support this contention, Justice Castille points out that certain statutory provisions, such as those dealing with negligence and defamation, do not address the right to a jury trial, but jury trials are nonetheless provided. *Id.* (Castille, J., dissenting). He also distinguishes the case relied on by the majority in reaching a conclusion on this issue. *Id.* (Castille, J., dissenting) (citing Hoy v. Angelone, 720 A.2d 745 (Pa. 1998)).

25. *Wertz*, 741 A.2d at 1280-81 (Castille, J., dissenting). Justice Castille, in supporting his interpretation of the constitution stated, "An interpretation . . . too rigid to encompass societal changes makes a mockery of the . . . Commonwealth. Thus, I would hold that the Pennsylvania Constitution guarantees appellant the right to a trial by jury in this . . . action." *Id.* at 1281 (Castille, J., dissenting).

matter of first impression in Pennsylvania. Additionally, the court established a clear test to use to determine whether a particular cause of action should receive a jury trial in accordance with the Pennsylvania Constitution.

CONSTITUTIONAL LAW — SEARCH AND SEIZURE — SEARCHES OF HIGH SCHOOL STUDENTS — The Pennsylvania Supreme Court held that a knife seized from a high school student, during a search of all students for weapons as a precondition of entry, was the product of a lawful search under both the United States Constitution and the Pennsylvania Constitution.

In the Interest of F.B., 726 A.2d 361 (Pa. 1999) cert. denied, 120 S. Ct. 613 (Dec. 13, 1999).

This case involves the constitutionality of a "point of entry" search of a Philadelphia high school, during which a student was arrested for bringing a weapon, a three inch Swiss army knife, onto school property.[26] A "point of entry" search involves students standing in a line outside school who are required to empty their pockets, coats, bookbags, etc., which are searched, and the students themselves are scanned with a hand-held metal detector before being allowed to enter the school building.[27]

The arrested student ("F.B."), being a juvenile, first had a hearing in juvenile court, where he attempted to suppress the knife, arguing that it had been found using a search for which there had been no individualized reasonable suspicion to believe that F.B. had violated any school policy or regulations.[28] The trial court rejected this argument, stating that the "point of entry" search was a justified and reasonable response to the increased violence occurring at the school.[29] The Pennsylvania Superior Court affirmed the trial court decision,[30] and the Pennsylvania Supreme Court granted F.B.'s

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26. In the Interest of F.B., 726 A.2d 361, 363 (Pa. 1999) cert. denied, 120 S. Ct. 613 (Dec. 13, 1999).

27. *In re F.B.*, 726 A.2d at 363. These searches are conducted by members of the Philadelphia Police Department, under the direction of the Philadelphia Public School system. *Id.* A student manual described the search procedures and policies employed in this case, and students and parents received notification before the start of the school year that those entering the building will be subjected to periodic searches. *Id.* Additionally, notices regarding the search procedures are posted throughout the school, and such notices are mailed to students' homes on a regular basis. *Id.*

28. *Id.* at 364.

29. *Id.* The ruling was made by Philadelphia County Common Pleas Court Judge Sheldon C. Jelin. *Id.* at 362.

30. In the Interest of F.B., 658 A.2d 1378 (Pa. Super. Ct. 1994). Judge Justin M. Johnson wrote the opinion for the superior court. *Id.* at 1379.

Petition for Allowance of Appeal.[31]

F.B. challenged the constitutionality of the search under the Fourth Amendment of the United States Constitution, as well as Article One, Section Eight of the Pennsylvania Constitution.[32] The court began its analysis by citing to an earlier Pennsylvania Supreme Court case, *Commonwealth v. Cass*,[33] which held that a general search held within a school did not violate the Fourth Amendment so long as the search meets a reasonableness test, set forth in *Vernonia School District 47J v. Acton*.[34] The court in *Cass* was unable to agree on a definite test for school searches under the Pennsylvania Constitution, but there were some factors that the *Cass* majority did agree on, which were employed by the *F.B.* court as a starting point.[35] Before beginning the analysis, the Pennsylvania Supreme Court noted that state policy regarding personal privacy created a higher standard of scrutiny under the state constitution; thus, if the school search was found constitutional under the state constitution, then it would also pass a Fourth Amendment test.[36]

The first "factor" considered by the court was an inquiry into the level of personal privacy that a public school student could expect while in the school setting, which the court found to be limited.[37]

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31. *In re F.B.*, 726 A.2d at 364. At the supreme court, attorneys John W. Packel and Jeffrey P. Shender from the Philadelphia County Public Defenders Office represented F.B., and attorneys Catherine Marshall and Thomas W. Dolgenos from the City of Philadelphia District Attorney's Office represented the Commonwealth. *Id.* at 363.

Justice Ralph J. Cappy wrote the majority opinion, joined by Justices Ronald D. Castille and Sandra Schultz Newman. *Id.* Chief Justice John P. Flaherty, Jr., filed a concurring opinion, and Justice Russell M. Nigro concurred in the result. *Id.* at 368. (Flaherty, C.J., concurring). Justice Stephen A. Zappala filed a dissenting opinion. *Id.* at 369-73 (Zappala, J., dissenting).

32. *Id.* at 364.

33. 709 A.2d 350 (Pa. 1998) (plurality opinion).

34. 515 U.S. 646 (1995); *see also* Commonwealth v. Cass, 709 A.2d 350 (1998). The three factors to be considered in the reasonableness test are:

> 1) the nature of the privacy interest upon which the search at issue intrudes, 2) the character of the intrusion, and 3) the nature and immediacy of the governmental concern and the efficacy of the means utilized to address that concern.

In the Interest of F.B., 726 A.2d at 364 (citing *Acton*, 515 U.S. at 654).

35. *In re F.B.*, 726 A.2d at 364-65. The factors were identified by the court as the following:

> 1) a consideration of the students' privacy interest, 2) the nature of the intrusion created by the search, 3) notice, and 4) the overall purpose to be achieved by the search and the immediate reasons prompting the decision to conduct the actual search.

Id. at 365.

36. *Id.*

37. *Id.* (citing New Jersey v. T.L.O., 469 U.S. 325 (1985)). The court quoted from *Cass*,

Although it acknowledged that the privacy interest in belongings actually on a student's person could be higher than the minimal level of privacy that a student possesses in a school locker, the court ultimately held that no greater privacy interest existed.[38] The court analogized that because items such as coats, bookbags, and purses could be searched if they were contained in a school locker, they could be logically searched even if they were not in a school locker, but rather on a student's actual person; thus no greater privacy right existed.[39]

The second factor, the nature of the intrusion created by a search, related closely to the first factor, and the court sought to consider them in concert with each other.[40] It was noted that the use of a hand-held metal detector was no greater an intrusion than that experienced by anyone traveling on an airplane who must pass through a metal detector.[41] The court acknowledged that this involved a greater intrusion than a locker search; the non-invasive character of the metal detector resulted in minimal intrusion to the student.[42]

In this case, the school district easily satisfied the third factor, that of notice.[43] The school district set forth the parameters for the search, as well as the actual method employed, in a manual, and gave notice both in school and at students' homes.[44] The final factor, the overall purpose to be achieved by the search and the immediate reasons prompting the decision for the search, appeared to be the weakest link for the school district.[45] Although the school

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"[t]he need to protect all students, to ensure school discipline, and protect school property, limits the student's expectation of privacy while in the school environment." *Id.* (quoting *Cass*, 709 A.2d at 360).

38. *Id.* The court, using the *Cass* decision as a guideline, accepted that a search of school lockers could extend to a search of personal items within a locker, including bookbags, coats, and purses. *Id.*

39. *Id.*

40. *In the Interest of F.B.*, 726 A.2d at 365.

41. *Id.* at 366.

42. *Id.* The court went on to note that, while a walk through a metal detector would be less intrusive to students, a search will not be barred merely because a less intrusive method exists; rather one must consider whether the means employed "are not so expansive as to be disproportionate to the purpose of the search." *Id.*

43. *Id.*

44. *Id.* The court stated that the notice given in this case provides an additional safeguard, in that the forewarning would serve to discourage students from bringing weapons into the school, which was the ultimate goal of the search, to keep weapons and violence out of the public school system. *Id.*

45. *In re F.B.*, 726 A.2d at 366. In this case, there were no records produced to provide reasoning as to why school staff believed the point of entry searches were necessary,

district could produce no records to support their decision to conduct "point of entry" searches, especially on the particular day at issue, the court opined that the interest in keeping weapons and violence out of schools was so obvious that the requirement of records to support the decision to search was needless.[46] Additionally, the increased rate of violence within the Philadelphia school district, of which the trial court gave judicial notice, gave credence to the decision to conduct a search on the particular day at issue.[47] Thus, the Pennsylvania Supreme Court held that the search of F.B. at his school on the particular day at issue met the minimum constitutional requirements under both the Fourth Amendment of the United States Constitution, as well as Article One, Section Eight, of the Pennsylvania Constitution.[48]

Chief Justice John P. Flaherty, Jr., who joined in the majority opinion but wished to emphasize some points of disagreement, filed a concurring opinion.[49] First, Chief Justice Flaherty disagreed with the majority's view that the intrusion was minimal, but believed that the unique quality of the school environment caused the search to be constitutional nonetheless.[50] Second, he disagreed that the judicial notice of increased school violence justified the particular search conducted, but since no one challenged the justifications, they must be held sufficient.[51] Finally, Chief Justice Flaherty wanted to note his concern with the classification of a Swiss army knife as a "weapon," but again because there was no challenge to this classification on appeal, the court could not reach the issue.[52]

Justice Stephen A. Zappala wrote a dissenting opinion, where he opined that the search constituted "police conduct," which violated

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especially on the particular day at issue. *Id.*

46. *Id.* at 366-67. The Philadelphia Public School Code's policy and procedure manual discussing the applicable criteria for searches was then produced. *Id.* at 367.

47. *Id.* The court noted that, "the primary object of the search, to remove weapons from students, comports with the duty and responsibility of the school administrators to keep their charges safe while in the school environment." *Id.* (citing *Cass*, 709 A.2d at 365, concurring opinion).

48. *Id.* at 368. The court pointed out that this holding of constitutionality as to the search was limited to the *sui generis* school environment. *Id.*

49. *Id.* at 368-69 (Flaherty, C.J., concurring).

50. *Id.* (Flaherty, C.J., concurring). Chief Justice Flaherty went on to add that the search, while intrusive, was fairly related to the purposes for which the search was completed. *Id.* (Flaherty, C.J., concurring).

51. *In re F.B.*, 726 A.2d at 368 (Flaherty, C.J., concurring).

52. *Id.* (Flaherty, C.J., concurring). He went on to add that, "if the items seized become oppressive, the search itself may be regarded as an instrument of oppression and unconstitutional regardless of its purpose." *Id.* at 369 (Flaherty, C.J., concurring).

both the United States and the Pennsylvania Constitutions.[53] Justice Zappala disagreed with the majority's interpretation of *Acton*, and stated his belief that the lesser degree of privacy afforded students in a school environment does not apply in situations where the police conduct the school search.[54] Thus, if one employed the heightened standard of probable cause, Justice Zappala believed that the school violated F.B.'s Fourth Amendment rights because probable cause for the search did not exist.[55] Additionally, Justice Zappala disagreed with the majority's analysis of the state constitution, including their holding that the search constituted a minimal physical intrusion, that the notice factor had been amply satisfied, and their determination that the lack of records regarding the decision to search was outweighed by the need to keep weapons out of schools.[56] Thus, Justice Zappala found that the search of F.B. resulted in a violation of the Pennsylvania constitution.[57]

The significance of this case is that it addresses the constitutional level of privacy that students are entitled to when they enter school property, which is an increasingly volatile issue given the recent episodes of school violence. It demonstrates that a lower expectation of privacy exists for school students on school property, when compared with privacy in one's home or other private area. This case attempts to establish a clear test to determine whether a student's privacy has been violated, a test which previously had been missing in the Pennsylvania courts.

CONSTITUTIONAL LAW — CONSTITUTIONAL INTERPRETATION — APPLICATION OF CONSTITUTIONAL RESTRICTIONS ON THE GENERAL ASSEMBLY TO LOCAL MUNICIPALITIES — The Pennsylvania Supreme Court held that principles in the state constitution relating to the General Assembly's legislative authority to appropriate funds from the state treasury apply equally to municipalities when appropriating funds from local treasuries.

Denbow v. Borough of Leetsdale, 729 A.2d 1113 (Pa. 1999).

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53. *Id.* at 369-73 (Zappala, J., dissenting).

54. *Id.* at 370 (Zappala, J., dissenting) (citing New Jersey v. T.L.O., 469 U.S. 325 (1985) (establishing reasonableness, rather than probable cause, as the standard for determining the validity of searches conducted by school officials in a school setting)).

55. *Id.* at 372 (Zappala, J., dissenting).

56. *In re F.B.*, 726 A.2d at 372-73 (Zappala, J., dissenting).

57. *Id.* at 376 (Zappala, J., dissenting).

This case involved the issue of whether Article Three, Section Twenty-Six of the Pennsylvania Constitution, which bars the Pennsylvania General Assembly from passing a bill giving extra compensation to a public employee already under contract, similarly bars a municipality from giving raises to municipal employees who were already receiving compensation pursuant to an employment contract.[58]

In 1991, the Borough of Leetsdale ("Borough") entered into an employment contract with its police officers to be effective until 1994, one which did not include a "wage reopener" provision.[59] In 1993, borough council voted to approve an addendum to the employment contracts so as to give substantial raises to four police officers in 1994.[60] Before this raise could be implemented, however, the newly reorganized borough council renounced the addendum and refused to pay the increased salary, which resulted in the police officers filing a breach of contract claim against the Borough in the Allegheny County Court of Common Pleas.[61]

The trial court held that Article Three, Section Twenty-Six the prohibited the raise given by borough council, since council was a political subdivision of the commonwealth.[62] On appeal, the commonwealth court affirmed the decision of the trial court.[63] Before the Pennsylvania Supreme Court, the appellants argued that Article Three, Section Twenty-Six the prohibition against extra compensation applies only to the General Assembly, not to municipalities such as the Borough.[64] Specifically, the appellants claimed that the plain language of the section, as well as two

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58. Denbow v. Borough of Leetsdale, 729 A.2d 1113 (Pa. 1999). The pertinent part of the Pennsylvania Constitution reads as follows: "No bill shall be passed giving any extra compensation to any public officer, servant, [or] employee . . . after services shall have been rendered or contract made . . . ." PA. CONST. art. III, § 26.

59. *Denbow*, 729 A.2d at 1113-14.

60. *Id.* at 1114. This occurred after two council members had been defeated in elections, thus changing the composition of borough council. *Id.*

61. *Id.*

62. *Id.* The Allegheny County Court of Common Pleas decision was written by Judge Bernard J. McGowan. *Id.* at 1113. The trial court did note that if the matter had involved only the private sector the appellants would be entitled to recover. *Id.* at 1114.

63. Denbow v. Borough of Leetsdale, 699 A.2d 838 (Pa. Commw. Ct. 1996). The decision affirming the trial court was written by Judge Joseph T. Doyle. *Id.* at 838.

64. *Denbow*, 729 A.2d at 1113. At the supreme court, attorney Ronald P. Koerner represented Ronald Denbow, and attorney Richard F. Start represented the Borough of Leetsdale. *Id.*

Justice Thomas G. Saylor wrote the unanimous opinion, joined by Chief Justice John P. Flaherty, Jr., and Justices Stephen A. Zappala, Ralph J. Cappy, Ronald D. Castille, Russel M. Nigro, and Sandra Schultz Newman. *Id.*

previous supreme court decisions, supported their claim.[65]

The court first noted that Article Three, Section Twenty-Six of the Pennsylvania Constitution is addressed to the General Assembly; however the court continued by stating that the issue to be answered is whether Section Twenty-Six has or should be interpreted to apply to actions of local municipalities, as well as to the General Assembly.[66] To aid it in making this determination, the court looked to the two cases cited by the appellants.[67] In the first case,[68] the supreme court opined that Section Eleven (now Twenty-Six) of the Constitution should be read in connection with Section Thirteen (now Twenty-Seven), both of Article Three; in the second case cited,[69] the court opined that Section Thirteen applied only to an act of the legislature, not to an action of a municipality or other local entity.[70] The appellant argued that reading these two cases together resulted in Section Twenty-Six not applying to actions of a municipality.[71]

In response to this argument, the Borough cited two other state cases that supported their position that Article Three, Section Twenty-Six most certainly applies to actions taken by municipalities.[72] The Borough asserted that the prohibition placed

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65. *Denbow*, 729 A.2d 1114 (citing McKinley v. School Dist. of Luzerne Township, 118 A.2d 137 (Pa. 1955); Retirement Bd. of Allegheny County v. McGovern, 174 A. 400 (Pa. 1934)).

66. *Id.* at 1115. The court notes that Article III of the constitution is entitled "Legislation," and specifies what procedures the General Assembly should use to enact legislation. *Id.*

67. *Id.*

68. *McGovern*, 174 A. 400. This case involved the issue of whether the Retirement Act contained within Public Law 1278 violated Section 11 (now Section 26) and Section 13 (now Section 27) of Article III of the Pennsylvania Constitution, which the court ultimately held did not. *Id.* at 404.

69. *McKinley*, 118 A.2d 137. In this case the appellant argued that a decree entered by a trial court, which reduced the school board set rate of commission that a school district tax collector received, violated Section 13 (now Section 27) of Article III of the Pennsylvania Constitution. *Id.* at 139. The court rejected this argument, holding that Section 13 "applies only to a law, which means an act of the legislature, and not to action by any municipal or local authority." *Id.*

70. *Denbow*, 728 A.2d at 1115. *See McGovern*, 174 A 400, 404; *McKinley*, 118 A.2d 137, 139.

71. *Denbow*, 729 A.2d at 1115. The appellant rationalized that the limitation placed on Article III, Section 13 (now 27) in the *McKinley* case must apply to Article III, Section 11 (now 26) as well, due to the holding in *McGovern* that the two sections must be read together. *Id.*

72. *Id.* at 1116 (citing Harbold v. City of Reading, 49 A.2d 817 (Pa. 1946); Francis v. Neville Township, 92 A.2d 892 (Pa. 1952)). *Harbold* involved issuance of "improvement bonds," issued to finance street improvements in Reading, Pennsylvania. *Harbold*, 49 A.2d 818. A bondholder who was not going to receive payments sued the City, who supposedly

on the General Assembly by Article Three, Section Twenty-Six equally constrains a municipality.[73]

The supreme court ultimately agreed with the logic and case law presented by the Borough, stating that the Borough's position closely complied with the role that municipalities play in the governmental system.[74] As such, the court held that the restrictions placed upon the General Assembly by Article Three, Section Twenty-Six of the Pennsylvania Constitution also applied to municipalities, thus forbidding the Borough from allocating extra compensation to police officers already covered by an employment contract.[75]

This case, which presented a single issue of first impression, clarified whether a section of the Pennsylvania Constitution applied to entities other than those explicitly mentioned in the language of the constitution. This case demonstrates that the standards embodied in the state constitution regarding the scope of the General Assembly's legislative ability to appropriate funds from the state coffers applies equally to municipalities, with regard to appropriation of funds from local treasuries.

CONSTITUTIONAL LAW — FREEDOM OF EXPRESSION — COMMERCIAL SPEECH — The Pennsylvania Supreme Court held that Pennsylvania's Physical Therapy Practice Act, which prohibits chiropractors who are not licensed physical therapists from advertising that they perform physical therapy services, does not unconstitutionally infringe on their freedom of expression.

Commonwealth v. State Board of Physical Therapy, 728 A.2d 340 (Pa. 1999).

This case questioned the constitutionality of a provision in the Physical Therapy Practice Act ("PT Act") that prevents chiropractors from advertising that they perform "physical

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had no liability, under Public Law 660; on appeal the City argued that the Public Law violated section 11 (now 26) of Article III of the Constitution. *Id.* at 819. The supreme court held that the law did violate section 11, thus the General Assembly could not require a city to pay the bondholders. *Id.* at 823-24. The second case cited, *Francis*, appeared to be factually similar to the present case. After concluding that the ordinance in question violated both Articles III and IV of the state constitution, the court added that, "unbridled financial chaos would result if municipal bodies were permitted to monetarily reward specific individuals, no matter how praiseworthy their services." *Francis*, 92 A.2d at 893-94.

73. *Denbow*, 729 A.2d at 1118.

74. *Id.* at 1118-19. The court noted that "[i]t is fundamental that municipal corporations are creatures of the State and that the authority of the Legislature over their powers is supreme." *Id.* (quoting Shirk v. Lancaster City, 169 A. 557, 560 (Pa. 1933)).

75. *Id.*

therapy."[76] After charges were brought against a group of chiropractors who placed newspaper advertisements that offered "physical therapy," a hearing examiner held that the PT Act allowed chiropractors who are certified in "adjunctive procedures" to advertise that their services include physical therapy.[77] The commonwealth court vacated the decision and held that the PT Act prohibited the advertisements at issue,[78] and the supreme court allowed an appeal to decide only the issue as to whether the commonwealth court's interpretation of the PT Act created an unconstitutional result.[79]

The appellants alleged that the commonwealth court's interpretation of the PT Act infringed on their freedom of expression guaranteed by Article One, Section Seven of the Pennsylvania Constitution.[80] The supreme court began its analysis by looking at the "adjunctive procedures" performed by chiropractors, which the hearing examiner believed related closely enough to physical therapy to allow the advertisement.[81] The appellants claimed that because the adjunctive procedures they employ in their chiropractic practice are very similar to those performed by physical therapists, they should be permitted to use

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76. Commonwealth v. State Bd. of Physical Therapy, 728 A.2d 340 (Pa. 1999).

77. *State Bd. of Physical Therapy*, 728 A.2d at 341.

78. Commonwealth v. State Bd. of Physical Therapy, 701 A.2d 292 (Pa. Commw. Ct. 1997). In writing the majority opinion for the commonwealth court, Senior Judge Silvestri looked at the plain language of the statute that stated, "[i]t shall be unlawful for any person to . . . hold himself out as being able to practice physical therapy . . . in any manner whatsoever unless such person has met the educational requirements and is licensed in accordance with the provisions of this act." *Id.* at 293 (quoting PA. STAT. ANN. tit. 63, § 1304(a) (West 1996)).

79. *State Bd. of Physical Therapy*, 728 A.2d at 341. At the supreme court, the following attorneys and law firms represented the parties litigating the case: James J. Kutz and Bridget E. Montgomery, from Eckert, Seamans, Cherin and Mellot, L.L.C., and Charles I. Artz represented Thomas A. Boch, D.C.; Paul A. Tufano from the Office of General Counsel, Robert J. DeSousa from the Department of State, and Assistant Counsel Bernadette Paul represented the Bureau of Professional and Occupational Affairs; Richard B. Tucker, III, J. Kent Culley, John E. Graf, from Tucker Arensberg, P.C., represented Pennsylvania Physical Therapy Association, et al. *Id.*

Chief Justice John P. Flaherty, Jr., wrote the majority opinion, joined by Justices Stephen A. Zappala, Russell M. Nigro, and Sandra Schultz Newman. *Id.* Justice Ronald D. Castille dissented, joined by Justice Ralph J. Cappy. *Id.* at 344-45 (Castille, J., dissenting).

80. *Id.* at 342. The appellants did not claim any infringement of their federally guaranteed constitutional rights under the First Amendment of the United States Constitution. *Id.*

81. *Id.* Adjunctive procedures are defined under the PT Act as "[p]hysical measures such as mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage and mobilization." *Id.* (quoting PA. STAT. ANN. tit. 63, § 625.102 (West 1996)).

advertising that offers and describes such therapy.[82] The court rejected this argument, citing that while some of the procedures performed by each group might overlap, the differences between the two groups regarding licensing and the services that are provided are too vast to permit such advertising.[83] Because the services that chiropractors perform do not constitute the practice of "physical therapy," the court held that it is not an unconstitutional violation of their freedom of expression to restrict the advertising of their services as including "physical therapy."[84]

After reaching this conclusion, the court then examined the level of protection afforded to commercial speech under the First Amendment of the United States Constitution, and applied it to the Pennsylvania Constitution, which observes the same minimum standards of protection.[85] Commercial speech, which includes advertisements, commands less protection and is more stringently regulated than non-commercial speech; for example, courts and government can ban untruthful or materially misleading advertisements without any constitutional violation.[86] Allowing chiropractors to advertise their services as including "physical therapy" would be materially misleading to the public; therefore, the court held that the legislative ban on such advertising served to protect the public from deceptive commercial speech, and was constitutionally sound.[87]

A dissenting opinion was written by Justice Ronald D. Castille, who stated that the rationale of protecting the public from misleading information, cited by the majority as the underlying purpose of the PT Act, was misplaced for two reasons.[88] First,

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82. *Id.*

83. *Id.* The court noted that physical therapists are allowed to employ their methods and services in a much less restrictive fashion than chiropractors, who can use adjunctive procedures only under certain defined circumstances. *Id.* at 342-43.

84. *State Bd. of Physical Therapy*, 728 A.2d at 343.

85. *Id.* (citing Insurance Adjustment Bureau v. Insurance Comm'r, 542 A.2d 1317, 1319 (Pa. 1988); Pennsylvania State Police v. Hospitality Investments of Philadelphia, Inc., 689 A.2d 213, 216-17 (Pa. 1997)).

86. *Id. See* United States v. Edge Broadcasting Co., 509 U.S. 418, 426 (1993); 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 498 (1996); Central Hudson Gas & Electric Corp. v. Public Service Comm'n of N.Y., 447 U.S. 557, 563 (1980).

87. *State Bd. of Physical Therapy*, 728 A.2d at 344. The court noted that this holding did not restrict the chiropractors' right to advertise generally, as long as they do not hold themselves out to provide "physical therapy." *Id.*

88. *Id.* at 344 (Castille, J., dissenting). Justice Castille also stated that the majority failed to grant the appropriate level of protection due to commercial speech under both the United States and Pennsylvania Constitutions. *Id.* (Castille, J., dissenting). Justice Ralph J. Cappy joined his dissent. *Id.* (Castille, J., dissenting).

because chiropractors do perform services that are often the same as those performed by physical therapists; and second, because the appellants in this case clearly stated in their advertisements that they were chiropractors, not physical therapists.[89] Therefore, since the appellants were certified to perform the actions they advertised, and they clearly stated in the advertisements that they were chiropractors rather than physical therapists, no governmental interest existed to support the statute's ban on such advertising.[90]

This case had the result of clarifying the scope and applicability of a Pennsylvania statute, and demonstrated the analysis applied by the Pennsylvania Supreme Court in identifying whether a statutorily applied limitation constituted a deprivation of the constitutionally guaranteed right of freedom of expression.

89. *Id.* (Castille, J., dissenting).

90. *Id.* at 345 (Castille, J., dissenting). To support this analysis, Justice Castille quoted from a United States Supreme Court case:

> when a State entirely prohibits the dissemination of truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands . . . complete speech bans . . . are particularly dangerous because they all but foreclose alternative means of disseminating certain information.

Id. (Castille, J., dissenting) (quoting *44 Liquormart*, 517 U.S. at 501).

CONSTITUTIONAL LAW — SEARCH AND SEIZURE — DNA DETECTION OF SEXUAL AND VIOLENT OFFENDERS ACT — The Pennsylvania Commonwealth Court held that the requirement that an inmate submit a blood sample for DNA identification as a condition for parole did not violate the separation of powers doctrine, was not an unconstitutional ex post facto law, and did not constitute an unconstitutional search and seizure.

Dial v. Vaughn, 733 A.2d 1 (Pa. Commw. Ct. 1999).

An inmate at a state correctional facility used the original jurisdiction of the Pennsylvania Commonwealth Court to challenge the retroactive parole requirement to give a blood sample to be used for a DNA identification bank pursuant to the DNA Detection of Sexual and Violent Offenders Act ("Act").[91] The Act allows for a DNA identification system to be created and used as a tool in criminal investigations and as deterrence to recurring crime.[92] The inmate, Ertle Dial, challenged the constitutionality of the Act, contending that the Act retroactively added another condition onto parole requirements, in violation of the separation of power doctrine, thus invalidating his guilty plea.[93] He also contended that the Act violated the ex post facto prohibitions contained in the both the Pennsylvania and United States Constitutions.[94] The respondents in this case filed preliminary objections in the nature of demurrers to the claims alleged by Dial.[95]

The court began its opinion by considering Dial's first claim that the Act deprived his eligibility for parole, thus affecting the length of his incarceration, in violation of the doctrine of separation of

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91. Dial v. Vaughn, 733 A.2d 1, 2-3 (Pa. Commw. Ct. 1999). Judge Bonnie Brigance Leadbetter wrote the majority opinion, which President Judge James Gardner Colins and Judges Joseph T. Doyle, Bernard L. McGinley, Doris A. Smith, and Dante R. Pellegrini joined. *Id.* Judge Rochelle S. Friedman filed a dissenting opinion. *Id.* at 7-12 (Friedman, J., dissenting).

92. *Dial*, 733 A.2d at 3. The identification system contains DNA from blood obtained from felons convicted of sex offenses, murder, harassment and stalking, and indecent assault. *Id.*

93. *Id.* at 3. Dial's petition for review was in actuality an amended petition for a writ of habeas corpus. *Id.*

94. *Id.* Additionally, Dial wanted his DNA information removed from the information system, as well as an injunction prohibiting further DNA testing as a condition of his release on parole. *Id.*

95. *Id.* The respondents in this case were the superintendent of the correction facility where Dial was located, the Attorney General of Pennsylvania, and the State Police. *Id.* Attorney Joel M. Ressler, Senior Deputy AG, represented the respondents. *Id.* at 2. No appearance was entered for the petitioner. *Id.*

powers.[96] Case law has established that a legislative act or order cannot later displace a final sentence delivered by the judiciary.[97] However, the court opined that the Act's requirement that Dial give a blood sample does not alter his maximum sentence, handed down by the judiciary, nor does it alter his parole eligibility date, which is often premised on full compliance with a number of prison rules and regulations.[98] Therefore, because the Act did not alter the judgment of sentence handed down by the judiciary, no violation of the doctrine of separation of powers existed.[99]

The court next considered whether the Act, specifically section 306(b), is in essence an ex post facto enhancement of Dial's sentence, in violation of both the United States and Pennsylvania Constitutions.[100] The general rule concerning ex post facto prohibitions requires two factors to be present; 1) the law at issue must be retrospective, and 2) the law must alter the definition of criminal conduct or increase the penalty of such conduct.[101] Additionally, there is no ex post facto violation if the legislation at issue is not penal in nature.[102] The court looked at this latter requirement first, and determined that the section of the Act requiring blood testing was not penal in nature and therefore could not be an ex post facto violation.[103] To support this determination, the court noted that there was no evidence, either in the Act itself or in its creation, that it was intended to punish or to act as punishment; rather it was created to operate solely in an administrative capacity.[104]

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96. *Id.* Section 306(b) of the Act provides that: A person who has been convicted . . . for a felony sex offense or other specified offense before the effective date of this section and who is still serving a term of confinement . . . shall not be released in any manner prior to the expiration of his maximum term of confinement unless and until a DNA sample has been withdrawn. *Id.* (quoting PA. STAT. ANN. tit. 35, § 7651.306(b) (West Supp. 1999)).

97. *Dial*, 733 A.2d at 3 (citing Commonwealth v. Sutley, 378 A.2d 780, 784-85 (Pa. 1977)).

98. *Id.* at 4. The court looked at the opinion in *Sutley*, where the court stated, "[T]he legal sentence is the maximum sentence . . . the minimum sentence determines parole eligibility, the maximum sets forth the period of time that the state intends to exercise its control over the offender for his errant behavior." *Id.* at 3-4 (citing *Sutley*, 378 A.2d at 786).

99. *Id.* The court sustained the respondents' preliminary objection in the nature of a demurrer. *Id.*

100. *Id.* The specific violations would be Article I, Section 10 of the United States Constitution, and Article I, Section 17 of the Pennsylvania Constitution. *Id.*

101. *Id.* (citing California Dep't of Corrections v. Morales, 514 U.S. 499 (1995)).

102. *Dial*, 733 A.2d at 4 (citing Van Doren v. Mazurkiewicz, 695 A.2d 967 (Pa. Commw. Ct. 1997); Commonwealth v. Kline, 695 A.2d 872 (Pa. Super. Ct. 1997)).

103. *Id.* at 5.

104. *Id.* The blood-testing requirement was likened to other identification requirements,

Next, in considering the general rule and its two requirements, the court again decided that no ex post facto violations existed.[105] In a similar case from the United States Court of Appeals for the Fourth Circuit, *Jones v. Murray*,[106] the court held that retaining an inmate for noncompliance of a blood taking requirement was not a violation if the mandatory parole date had not yet been reached, because the retention did not exceed the terms of the prisoners' original sentence.[107]

Finally, Dial's assertion that the Act violated the unreasonable search and seizure prohibition contained in the Fourth Amendment of the United States Constitution was addressed, and rejected by the court.[108] Taking a blood sample for testing does fall under the auspices of the Fourth Amendment, and normally requires a threshold of reasonableness.[109] However, since Dial was an incarcerated felon at the time of the request for blood, one may establish the requirement of reasonableness without the need for probable cause or reasonable suspicion.[110] The court opined that the public's interest in maintaining the DNA information system outweighed any minimal intrusion occasioned by the blood withdrawal; thus, there was no violation under the Fourth Amendment of the United States Constitution.[111] The Commonwealth Court of Pennsylvania sustained the respondents' preliminary objections in nature of demurrers and dismissed Dial's petition.[112]

A dissent was written by Judge Rochelle S. Friedman, who opined that the Act violated the separation of powers doctrine, the ex post facto clauses of both the United States and Pennsylvania Constitutions, as well as the Fourth Amendment of the United

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such as fingerprinting and photographing. *Id.*

105. *Id.* The court found that the Act imposed an administrative punishment where an inmate refused to comply with a "reasonable administrative regulation." *Id.*

106. 962 F.2d 302 (4th Cir. 1992).

107. *Dial*, 733 A.2d at 6. In *Jones*, the court held that there was an ex post facto violation, however, in that situation the statute prohibited the release of non-complying inmates who had reached their mandatory parole date. *Jones*, 962 F.2d at 310. The Pennsylvania Act at issue does not limit release beyond the mandatory release date established under the terms of the original sentence established by the judiciary. *Dial*, 733 A.2d at 6.

108. *Dial*, 733 A.2d at 6.

109. *Id.* (citing Schmerber v. California, 384 U.S. 757, 767 (1966)).

110. *Id.* at 7 (citing Bell v. Wolfish, 441 U.S. 520, 559 (1979)).

111. *Id.*

112. *Id.*

States Constitution.[113] Concerning the separation of powers doctrine, Judge Friedman believed that the Act allowed legislators to impose a different sentence, one without parole, on prisoners who refused to submit to the blood testing, thus violating separation of powers.[114] Employing the two requirements needed for an ex post facto violation, Judge Friedman found that the Act retroactively increased the punishment of certain prisoners, through the denial of parole as well as the use of "reasonable force," which the statute permits to be used to obtain the blood.[115] Finally, Judge Friedman opined that the DNA samples were much more intrusive than the majority believed, in that they reveal many things about a person including race, appearance, and predisposition to disease, and that this level of intrusiveness constituted a violation of the Fourth Amendment of the United States Constitution.[116]

This case is important because it is one of first impression. The increasing advances in science and DNA technology guarantees that issues such as those addressed in this opinion will continue to arise. The increasing availability and accuracy of DNA testing will allow it to be utilized much more in the future, insuring that additional constitutional concerns regarding its use will also occur in the years to come.

CONSTITUTIONAL LAW — PROCEDURAL DUE PROCESS — TAX ASSESSMENT APPEALS — The Pennsylvania Commonwealth Court held that a township and a school district possess the same procedural due process rights that individual taxpayers have to appeal an untimely decision by a tax assessment board.

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113. *Dial*, 733 A.2d at 7 (Friedman, J., dissenting).

114. *Id.* at 8 (Friedman, J., dissenting).

115. *Id.* at 10 (Friedman, J., dissenting). The portion of the statute employed by Judge Friedman states the following, "Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to submit to DNA testing authorized under this act . . . . " *Id.* at 9 (Friedman, J., dissenting) (quoting PA. STAT. ANN. tit 35, § 7651.307(c) (West. Supp. 1999)).

116. *Id.* at 11 (Friedman, J., dissenting). Judge Friedman went through each factor that determines whether a search is reasonable, and found that the Act violated each of them. *Id.* (Friedman, J., dissenting). The first factor, scope of intrusion, was found to be considerable, due to the nature of DNA testing. *Id.* (Friedman, J., dissenting). The second factor, the manner of testing, was found to be violative due to the allowance of reasonable force to be applied to prisoners. *Id.* (Friedman, J., dissenting). The third factor, justification for testing, was also questioned by Judge Friedman because she claimed that it made "an irrational distinction between prisoners," did nothing to deter recidivism, might not be admissible in a Pennsylvania court, and are not 100% accurate. *Id.* at 12 (Friedman, J., dissenting). Finally, Judge Friedman questioned the fourth factor, place for testing, claiming that no evidence showed that the correction facility took the samples in a medically approved manner. *Id.* at 13 (Friedman, J., dissenting).

Richland School District v. County of Cambria Board of Assessment Appeals, 724 A.2d 988 (Pa. Commw. Ct. 1999).

This case arose as a result of a tax assessment made in 1997 on a shopping and commercial center known as the Galleria.[117] Johnstown Zamias Limited Partnership ("Owner"), the owner of the property, and the Richland School District ("School District") filed timely appeals with the County Board of Assessment ("Board") regarding the assessment; the owner seeking to lower the tax, and the school district seeking to increase the amount of tax.[118] The Board held a hearing for the Owner in November of 1996, and found that the assessment would remain unchanged.[119] The Board did not hear the School District's appeal until May of 1997, and subsequently issued an order on June 2, 1997 increasing the Galleria's assessed value.[120]

The School District appealed to the Cambria County Court of Common Pleas, alleging that the Board had undervalued the property.[121] The Owners countered, seeking to have the appeal dismissed on the grounds that the Board's actions were void because it missed the deadline established by statute for an assessment appeal, and therefore the Board lacked jurisdiction.[122] The trial court granted the Owner's motion for judgment on the pleadings, and the school district appealed to the commonwealth court.[123]

The School District's primary argument on appeal was that the trial court had erred when it determined that a distinction existed between the due process rights afforded to a property owner and those rights afforded to a taxing authority, when a governmental agency such as an assessment board fails to act in a timely

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117. Richland School Dist. v. County of Cambria Bd. of Assessment Appeals, 724 A.2d 988 (Pa. Commw. Ct. 1999). Judge Joseph T. Doyle wrote the unanimous opinion, joined by Senior Judge Jiuliante and Judge James J. Flaherty joining in the opinion. *Id.*

118. *Richland*, 724 A.2d at 988. The Board did not consolidate the two separate appeals. *Id.*

119. *Id.* The Board made this determination although the Owner had withdrawn its appeal. *Id.*

120. *Id.* The Galleria's value was originally assessed at $2,944,260.00, and increased by the Board to $3,401,730.00. *Id.*

121. *Id.* at 989. Court of Common Pleas Judge Creany wrote the majority opinion for the trial court. *Id.* at 988.

122. *Id.*

123. *Richland*, 724 A.2d at 989. At the commonwealth court, attorney Richard T. Williams, Sr. from Johnstown represented Richland Township and School District, and attorney Alfred K. Hettinger from Allentown represented Johnstown Zamias Ltd. Partnership. *Id.* at 988.

manner.[124] The court first noted that the relevant statute itself provided that all appellants are entitled to the same rights and procedures regarding the appeal of a tax assessment, whether they are an individual property owner or a governmental taxing authority.[125] The court added that a municipality has been entitled to the protections of procedural due process for a considerable time.[126] Based on these two facts, the court held that the trial court had erred when it held that the School District did not have the same procedural due process rights as an individual property owner when a tax assessment appeals board failed to take action before the statute required.[127]

This case is significant because it clarified the procedural rights owed to a governmental entity regarding a tax assessment appeal, as compared to the rights owed to an individual.

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124. *Id.* at 989. The school district argued that the statutory requirement at issue, that local boards of assessment located in Fourth to Eighth Class Counties must issue rulings on all tax appeals by October 31, was not a mandatory requirement. *Id.* The statute in question states the following, "The board shall meet for the hearing of appeals . . . until all appeals have been heard and acted upon. All appeals . . . shall be acted upon not later than the last day of October." *Id.* (quoting PA. STAT. ANN. tit. 72, § 5453.702 (West 1994)).

125. *Id.* (citing PA. STAT. ANN. tit. 72, § 5453.706 (West 1994)).

126. *Id.* at 990. *See* Institution Dist. v.. Township of Middletown, 299 A.2d 599 (Pa. 1973).

127. *Richland*, 724 A.2d.at 990. The commonwealth court reversed the court of common pleas ruling, and remanded the case to the lower court to determine the substantive issues in the appeal. *Id.*