

TODD PYSSHER, : IN THE COURT OF COMMON PLEAS
Respondent : LYCOMING COUNTY, PENNSYLVANIA

vs. : NO.: CV-17-647

CLINTON TOWNSHIP :
VOLUNTEER FIRE COMPANY, : RIGHT-TO-KNOW LAW (RTKL)
Petitioner :

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DAVE BOHMAN and WNEP-TV, : IN THE COURT OF COMMON PLEAS
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PETITIONER'S BRIEF

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The RTKL defines a local agency as "Any of the following.... (2) any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity." 65 P.S. §67.102. The Volunteer Fire Company is not a local, intergovernmental, regional or municipal agency, nor is it an authority, council, board or commission. The only question is whether or not it is a "similar governmental entity." The Statutory Construction Act provides very clearly that terms in a statute are to be construed in accordance with their plain and usual meaning. 1 Pa.C.S. §1991. The plain meaning of "governmental" is "to exercise the function of governing or ruling." "Governing" is defined as "to exercise authority over; rule, administer, direct, control, manage, etc. or to influence the action or conduct

of others." *See*, Webster' New World Dictionary, Third College Edition (1988 Simon & Schuster, Inc.).

The Fire Company provides volunteer fire services to the residents of Clinton Township and many other Townships. It does not govern, set policy or control the acts or activities of persons residing within those Townships. It enters into contracts with municipalities to carry out a service, the same as any other contractor providing a service to a municipality. Applying the plain meaning of the word "governmental" it is clear that Pennsylvania volunteer fire companies do not "govern" within the meaning of the RTKL.

An examination of those cases reveals that the decisions rendered therein are specifically limited to the Political Subdivision Tort Claims Act. Commonwealth Court in Wilson vs. Dravosburg Volunteer Fire Department No. 1, 516 A.2d 100, 102, specifically held, "We hold that volunteer fire companies are entitled to governmental immunity under the 1980 Immunity Act." But, "We stress at this time that our conclusion that volunteer fire companies are local agencies is limited to our analysis of the 1980 Immunity Act."

The other cases cited by OOR deal strictly with the Political Subdivision Tort Claims Act and issues as to whether or not the immunity is limited to while performing emergency services or whether it extends to a fire company carnival where alcohol is served, and other issues under that particular statute. The courts have been clear and express in limiting the applicability of those decisions to that particular statute.

An excellent discussion as to the history of volunteer fire companies in Pennsylvania is to be found in Ralcond Corporation vs. Muldoon, 516, A.2d 800 (Pa. Cmwlth. 1986). That is the first case wherein Commonwealth Court opined that Volunteer fire companies are entitled to governmental immunity because of their distinct creation and present relationship to municipalities. The Court in that case noted that fire companies serve an essentially charitable purpose and that to advance that purpose, the granting of immunity is appropriate because of the realization of the need to continued public protection from fire and the realization that a governmental duty can be capable of being performed by mostly volunteer organizations.

It must be pointed out, however, that it is township supervisors who determine the extent of fire and emergency medical services to be provided. The Second Class Township Code provides in pertinent part,

The Township shall be responsible for ensuring that fire and emergency medical services are provided with the Township by the means and to the extent determined by the township, including the appropriate financial and administrative assistance for these services.

53 P.S. §66553.

It is therefore, the township which carries out the public policy or governmental function of determining the means and the extent of the township's responsibility for ensuring that fire and emergency medical services are provided. Once that policy decision is made by the township, it then engages the volunteer fire company to provide the services which it, as the township's elected representatives, has determined are appropriate.

It is not the fire company that makes any determination as to the means or the extent of providing fire and emergency medical services within the township. The policy or governmental or governing decision is made by the elected representatives, i.e., the board of supervisors.

Certainly, the RTKL's provisions providing for disclosure of public documents is appropriate when the focus is elected, public-policy-setting governing officials. It is inappropriate and totally uncalled for as it may relate to a private, nonprofit corporation which contracts with the governing policymaking body to provide a service.

The courts have repeatedly noted that the reason for the grant of immunity to volunteer fire companies is that they have traditionally provided services for the public and are granted immunity on that basis. See, e.g., Flood v. Silfies, 933 A.2d 1072, 1078 (2007). The Clinton Township Volunteer Fire Company provides services for the public. That grant does not sweep wide enough to render volunteer fire companies subject to disclosure of documents, information and records in the same fashion as elected or appointed public officials who establish policy and govern. The Fire Company has no power to tax, to collect taxes or levies, nor can it pass resolutions or ordinances subjecting individuals to police power. It simply is not a governing body in the traditional sense of a policymaking governing body with policy power to carry out its decisions.

It may be suggested that because the Fire Company receives some tax revenue, it becomes governmental and subject to RTKL. Pennsylvania law is clear that the mere

funding or an institution or agency does not, however, make that agency an instrumentality of the state or any other governmental entity. See, e.g., The Pennsylvania State University vs. Derry Township School District, 731 A.2d 1272, 1274 (1999).

The whole tax revenue argument makes little sense. For example, if the Township desires to make a donation to the SPCA or Little League baseball, does that mean that the SPCA and Little League baseball are subject to the RTKL? Obviously not! The RTKL was established for government transparency. The volunteer fire company does not make any legislative decisions. Their purpose is to protect the community and fight fires as a volunteer organization. Assuming that subjecting a volunteer fire company to the RTKL may have a chilling effect on the number of individuals willing to join volunteer fire companies. This chilling effect is especially troubling in light of the fact that volunteer fire companies are having difficult times recruiting firefighters at the present time.

For the foregoing reasons, Clinton Township Volunteer Fire Company requests that the decision of the OOR be reversed and, that the Court find that volunteer fire companies are not local agencies subject to the RTKL.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

AND NOW, this 19th day of June, 2017, the undersigned, Joseph F. Orso, III, certifies and says that he did serve a copy of Petitioner's Brief upon Respondent, Todd Pysher by placing a copy of the same in the mailbox of his attorney located at the Lycoming County Prothonotary's Office, as follows:

Christopher H. Kenyon, Esquire
McCormick Law Firm
835 West Fourth Street
Williamsport, PA 17701

and also upon Respondent Dave Bohman and WNEP by placing a copy of the same in the United States mail, postage pre-paid as follows:

Dave Bohman and WNEP
16 Montage Mountain Road
Moosic, PA 18507

and also upon the following interested parties by placing a copy of the same in the United States mail postage pre-paid, as follows:

Bina Singh, Appeals Officer
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
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Respectfully Submitted,



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