

Municipal Authorities

Generally

There is often confusion resulting from the erroneous impression that a municipal authority is merely the child or instrumentality of the municipality incorporating it. Municipalities create authorities pursuant to various statutes, perhaps the most common of which is the Municipality Authorities Act.¹ In accordance with the Municipality Authorities Act, one or more municipalities may act to form a municipal authority. Also, municipal authority board members are to be appointed by municipal governing bodies. Nevertheless, for reasons of public policy and convenience, a municipal authority is NOT the creature, agent, or representative of the municipality or municipalities organizing it; but rather, it is a separate and distinct entity.² A municipal authority is an independent agency of the Commonwealth, a part of the Commonwealth's sovereignty. Defined as “[a] body politic and corporate,”³ a municipal authority may be said to be an independent corporate agent of the Commonwealth, exercising governmental, as well as private corporate power, in assisting the Commonwealth in meeting the needs of its citizens.

Many authorities exercise certain powers and perform certain functions both within and outside the municipal limits of the incorporating municipality, within constitutional and statutory limitations. The Municipality Authorities Act dictates a broad grant of power so that municipal authorities may accomplish the purposes intended under the act in an efficient and economical manner and for the benefit and health of all the people of this Commonwealth.⁴

Like municipalities, the power of municipal authorities to act depends upon statutory delegation. By statute, municipal authorities are permitted to undertake a wide range of different projects. It is true that the municipality or municipalities that organize the authority, by either an initial or subsequent ordinance or resolution, may limit or specify the project or projects to be undertaken by the authority.⁵ If this is done, then no other projects are to be undertaken by the authority, except those specified; but if this power to limit or specify authority projects is not used, then the authority is deemed to have all the powers permitted it under law.

¹ 53 Pa.C.S. § 5601 et seq.

² *Smith v. Athens Tp. Authority*, 685 A.2d 651 (Pa. Cmwlth. 1996), *appeal denied*, 548 Pa. 622 (1997)

³ 53 Pa.C.S. § 5602.

⁴ *See, generally*, 22A Summ. Pa. Jur. 2d. Municipal and Local Law § 13:10 (2d ed.)(2020).

⁵ Under specific circumstances, authorities may be forced to dissolve and/or have their projects overtaken by the municipalities that created them. *See Township of Forks v. Forks Tp. Mun. Sewer Authority*, 759 A.2d 47 (Pa. Cmwlth. 2000).

Projects of an Authority

Among the many projects in which an authority may engage are those involving the following:

. . . [the] acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing [of] . . .

- (1) Equipment to be leased by an authority to the municipality or municipalities that organized it or to any municipality or school district located wholly or partially within the boundaries of the municipality or municipalities that organized it.
- (2) Buildings to be devoted wholly or partially for public uses, including public school buildings, and facilities for the conduct of judicial proceedings and for revenue-producing purposes.
- (3) Transportation, marketing, shopping, terminals, bridges, tunnels, flood control projects, highways, parkways, traffic distribution centers, parking spaces, airports and all facilities necessary or incident thereto.
- (4) Parks, recreation grounds and facilities.
- (5) Sewers, sewer systems or parts thereof.
- (6) Sewage treatment works. . . .
- (7) Facilities and equipment for the collection, removal or disposal of ashes, garbage, rubbish and other refuse materials by incineration, landfill or other methods.
- (8) Steam heating plants and distribution systems.
- (9) Incinerator plants.
- (10) Waterworks, water supply works, water distribution systems.
- (11) [Certain] Facilities to produce steam
- (12) [Certain] Facilities for generating surplus electric power which are related to incinerator plants, dams, water supply works, water distribution systems or sewage treatment plants
- (13) Swimming pools, playgrounds, lakes and low-head dams.
- (14) Hospitals and health centers.
- (15) [Certain] Buildings and facilities for private, nonprofit, nonsectarian secondary schools, colleges and universities, State-related universities and community colleges
- (16) Motor buses for public use . . . and subways.
- (17) Industrial development projects
- (18) Storm water planning, management and implementation⁶

⁶ 53 Pa.C.S. § 5607.

Disputing the “Rates” for Services Charged by a Municipal Authority

A common constituent question involves the method by which a customer within a municipal authority's service area who feels aggrieved by the rates imposed by the authority for its services can seek redress. The municipal authority may insist that its rates are justified.

The language of Title 53 of the Pennsylvania Consolidated Statutes, Section 5607(d)(9), speaks of fixing reasonable and uniform rates “in the area served by [a municipality authority's] facilities.” Under this section, the municipal authority is granted the exclusive authority to set rates for its services. The recipient of these services does not negotiate the amount that he or she is to be charged. These ratepayers, therefore, are intended to be protected by the provision requiring the rates to be reasonable and uniform. These rates are subject only to judicial review, not to the review of the incorporating municipality.

In construing a municipal authority's ratemaking powers, Pennsylvania courts have repeatedly emphasized and relied upon two controlling legal principles: (1) that a municipal authority has been granted the exclusive power to fix the rates to be charged its customers (ratepayers), and (2) that an authority may exercise, but not abuse, its discretion in fixing rates, which are reasonable and uniform in the area serviced by its facilities.⁷ Similarly, in disputes between a ratepayer and a municipal authority concerning an authority's possible abuse of discretion in fixing rates, the Legislature has designated the court of common pleas as having exclusive jurisdiction to resolve all such questions.⁸ Moreover, in exercising its jurisdiction to resolve questions concerning rates set by a municipal authority, a common pleas court may not appropriate the rate-fixing power of the municipal authority by substituting its discretion for that of the authority. The court's function is to determine whether the ratepayer has met the burden of proof regarding the municipal authority's alleged abuse of discretion in establishing a rate system that violates the statutory standards of reasonableness or uniformity.

⁷ See, e.g., *Smith*, *supra*, note 2; *West v. Hampton Tp. Sanitary Authority*, 661 A.2d 459 (Pa. Cmwlth. 1995).

⁸ See 53 Pa.C.S. § 5607(d)(9).