

ELEMENTS OF AN ADMINISTRATIVE SERVICES AUTHORITY

Presented by:

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Why Administrative Services?

Both the scope of potential “projects” and the range of fees can be broader for municipal authorities created to provide “administrative services” than traditional “projects”.

Traditional Authority “Projects”

Section 5607(a) of the Municipality Authorities Act (the “Act”), entitled - “Scope of projects permitted” lists various “facilities” for “acquiring, holding, constructing, financing, improving, maintaining and operating” (including as a lessee).

Recent Exception: Stormwater

The latest addition to the list of authorized authority projects is stormwater management. Unlike the others, this activity does not necessarily contemplate construction, ownership or operation. Instead the Authority simply plans, manages and implements:

“5607(a)(18) Stormwater planning, management and implementation as defined in the articles of incorporation by the governing body...”

Most Stormwater Assets not Owned or Operated by the Authority

Best management practices (BMPs) to be implemented by a stormwater authority will be located predominantly on private property. I have not heard it suggested that the authority has to acquire easements or other real estate interest in order to charge for service by stormwater “facilities”.

Bottom line: The Act is not limited to traditional facility construction and operations.

Traditional Authority User fees

Section 5607(d)(9):

An Authority has “rights and powers ... [to] charge and collect rates and other charges in the area served by its facilities ...”

“Served by Its Facilities”

An Authority has to own or lease assets (in the nature of real, not personal, property) and use them to provide service by those assets, in order to impose traditional rates and charges.

Recent Appellate Cases

However, the PA Commonwealth Court has held that an Authority does not have to own or operate any assets to charge for “administrative services.”

Alternative Basis for Rates

**Later in the same paragraph of
5607(d)(9):**

**“in the case of an authority created
for the purpose of ... providing
administrative services, a charge for
such services which may be based
on...”**

Two Types of Authorities

Section 5607(d)(9) suggest there are two types of authorities for rate setting purposes:

- (1) Authorities with “facilities” that “serve” a defined “area”, and**
- (2) Authorities “created for the purpose of...providing administrative services”.**

Each has its own scope of potential projects, and conditions to rate setting.

PA Waste Industries Assoc. v. Monroe County
Municipal Waste Authority, 80 A.3d 546 (2013)

PA Commonwealth Court: “By its terms, the second clause [of 5607(d)(9)] pertains to an authority which may not own or operate ‘its facilities,’ but nevertheless provides other functions, such as making business improvements or providing administrative services. The Authority here qualifies as such.”

Administrative Fee Components

An administrative service “charge” must be based on “actual benefits” and “measured on, among other things:”

(1) “gross sales or gross or net profits”

(2) “the payment of the principal of and interest on [the authority’s] obligations”

Administrative Fee Components (cont.)

(3) To fulfill the terms and provisions of any agreements made:

(a) “with the purchasers or holders” of its debt (e.g. bonds or bank loans); or

(b) “with a municipality” (e.g. services contracts)

Administrative Services are Broader than the Traditional

**Powers of an Authority are
potentially much broader when it
provides purely administrative
services, rather than for the use of
traditional facilities**

Section 5602 Definition

“Administrative service”. In the case of authorities created for the purpose of making business improvements or providing administrative services, the term means those services which improve the ability of the commercial establishments of a district to serve the consumers . . .”

Emergency Services Improve the Ability of a Business' to have Customers

**Difficult if not impossible to
conduct business without
adequate fire, ambulance and
other emergency services!**

Examples Given under Section 5602

“such as”

- “free or reduced fee parking for customers”
- “transportation repayments”
- “public relations programs”
- “group advertising”
- “district maintenance”
- “security services”

Fire/EMS under the Act?

There are no specified powers in the Act to provide fire protection services or emergency transport (ambulance/EMS)

However:

By Definition, Administrative Services can Include Most Local Government Activities

Strategy: Characterize fire protection/emergency management as administrative services that enable businesses to serve “consumers” (customers) in the “district” (entire county of incorporation).

See later discussion – contiguous residential properties in a district can also be charged.

Weaknesses

Administrative services have historically (and statutorily) been tied with “business improvements”

However...

Argument

Repetitive use of the word “OR” in the Act

**The Act refers to “business
improvements or administrative
services” (though occasionally “and”
is used).**

**Wivagg v. Downtown McKeesport Business Dist.
Authority, 502 A.2d 1112 (1986)**

PA Commonwealth Court: “the Authority does have the power to assess for administrative services which are not provided in conjunction with business improvements.”

Statutory Prerequisites

**What are the Statutory Prerequisites
to Imposing an Administrative
Services Charge?**

One Must First Create an Administrative Services Authority

Incorporating an Administrative Services Authority (“ASA”) is the same process as a typical Authority except:

Act Section 5603(b)

**The notice of public hearing to
incorporate a new ASA:**

**“if appropriate the notice shall specifically
provide that the [incorporator has]
retained the right which exists under this
chapter to approve any plan of the
authority”**

Act Section 5603 (c)(6)

Articles of Incorporation contents:

“if appropriate, a statement that the [incorporator has] retained the right which exists under this chapter to approve any plan of the authority”

Is Plan Approval Desirable

For political reasons, a county might not want to “approve” a “plan” for services and fees to be established by an ASA it creates.

Anti-competition Language in the Act

Act Section 5607(b)(2) prohibits an Authority from engaging in activities “which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes”

Provision Not Applicable

The Role of an ASA is not to render services directly (that could compete) but to impose and collect revenues and use them to finance and coordinate services provided by existing entities over a broader geographic area.

Exceptions

Competition exception in 5607(b)(2)(iii):
“for authorities created for the purpose of providing business improvements AND administrative services if [the incorporator] declares by resolution or ordinance that it is desirable for the entire local government unit [not defined] to improve the business district [also not defined]”

Confusing Language

Because the word “and” is used (as well as the words “to improve”), and the authority will not provide business improvements, it would be best not to rely on this exception when providing only administrative services.

Competition is a Factual Issue

Compare:

PA Waste Indus. Assn. v. Monroe County Mun. Waste Mgmt. Auth., 80 A.3d 546 (2013) “this Court was not convinced by the testimony that [a landfill RFP would] unnecessarily burden or interfere with existing business...”

and

Dominion Products v. Pittsburgh Water & Sewer Auth., 44 A.3d 697 (2011) “This enterprise, established by PWSA, interferes with existing warranty programs and competes with existing plumbing companies...”

The anti-competition language would be a potential issue even if the Authority had the express powers.

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Two Types of ASA Fees

There are apparently two forms of administrative services fees under the Act (akin to the different rules that apply to user rates, assessments and tapping fees):

an “assessment” (under 5607(d)(27))

and

a “charge” (under 5607(d)(9))

Assessments for Business Improvements

Assessments for “business improvements and administrative services” can be imposed under 5607(d)(27)(i) (not to be confused with sewer or water assessments authorized elsewhere in the Act) that must be based on either:

(A): “assessed value for real estate purposes of the benefited property”; or

(B) “benefits as ascertained by viewers” where single family dwellings “shall be one-half of the assessed value or the property for real estate tax purposes”

Assessments for Business Improvements

**A pure ASA would likely not impose
this type of assessment.**

Requirements for an Administrative Service Charge

Summary of Section 5607(g) requirements for an Administrative Service Charge:

- (1) the ASA's services must be in a "district" "designated by a municipality" (like a single countywide district)
- (2) the district must be "zoned commercial or used for general commercial purposes or in contiguous areas [i.e. residential] if the inclusion of the contiguous area is directly related to the...services proposed by the authority."

Requirements for an Administrative Service Charge (cont.)

(3) “The authority shall make planning or feasibility studies to determine needed . . . administrative services.”

(4) “The authority shall be required to hold a public hearing on the proposed...service, the estimated costs thereof and the proposed method of assessment and charges. Notice of the hearing shall be advertised at least 10 days before it occurs in a newspaper whose circulation is within [the incorporator]”

Requirements for an Administrative Service Charge (cont.)

(5) “Written notice of the proposed . . . service, its estimated cost, the proposed method of . . . charges and project cost, to individual property owners shall be given to each property owner and commercial lessee in benefitted properties in the district at least 30 days prior to the public hearing.”

Problem: contacting lessees

Requirements for an Administrative Service Charge (cont.)

(6) “The Authority shall take no action on the proposed . . . service if objection is made in writing by:

(i) persons representing the ownership of one-third of the benefited properties in the district; or

(ii) property owners of the proposed district whose property valuation as assessed for taxable purposes shall amount to more than one-third of the total property valuation of the district.”

(7) Objections must be made within 45 days after the public hearing, in writing, signed by the property owner and filed in the offices of: (i) the municipality where the district is located and (ii) the authority.

Probably not problems if countywide ASA

Questions?

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