IN THE SENATE OF PENNSYLVANIA

Appeal of Krawczeniuk	:	Senate RTK Appeal 03-2009

OPINION
November 23, 2009

Statements of Fact

By request dated September 22, 2009, Mr. Borys Krawczeniuk (Appellant), a writer with the Scranton Times-Tribune, sought access to "... a copy of any memorandums, communications, notes, letters, instructions, e-mails or other correspondence between Sen. Robert J. Mellow of [*sic*] members of his staff and the Senate Clerk's office regarding leases on the senator's Peckville and Mount Pocono offices. In particular, I am interested in memorandums, communications, notes, letters, instructions, e-mails or other correspondence centered on the terms of the leases." This request was made pursuant to the recently enacted Right-to-Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §67.101 et seq. (the Act).

By letter dated September 24, 2009, the Senate's Open Records Officer, W. Russell Faber, denied Appellant's request concluding that the records were

not accessible legislative records under the Act. By letter dated October 15, 2009, Appellant has appealed the denial to this office. At the joint request of the parties, a two week continuance was granted in this case.

Discussion

Section 102 of the Act defines the Senate as a "legislative agency." Section 303(a) of the Act states that, "A legislative agency shall provide legislative records in accordance with this act." At issue in this appeal is whether or not the documents and records requested by Appellant are legislative records.

The definition of legislative records contained in Section 102 includes financial records of the Senate and Appellant contends the records he seeks are financial records. The definition of a financial record in Section 102 is, inter alia:

> "1. Any account, voucher or contract dealing with:
> (i) the receipt or disbursement of funds by an agency; or
> (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property..." (Emphasis is added.)

The threshold inquiry in this appeal must be whether or not the records sought by Appellant are actually and specifically accounts, vouchers or contracts. The answer must be no.

The requested records are memorandums, notes, e-mails, letters and any other communications. These types of documents would not be considered accounts, vouchers or contracts. The scope of the Appellant's request is broad to

the extent that he seeks access to any document that might exist as a result of the leasing of two senatorial district offices. The statute defines an accessible financial record much more narrowly.

It is a basic premise statutory construction that the intention of the General Assembly must be ascertained and given effect. Craley v. State Farm Fire and Casualty Co., 586 Pa. 484, 895 A.2d 530 (2006). The legislative intent is best gleaned from the clear and plain language of the statute. Bowser v. Blom, 569 Pa. 609, 807 A.2d 830 (2002). And, "... when the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent." Walker v. Eleby, 577 Pa. 104 at 123, 842 A.2d 389 at 400 (2004).

The section of the Act at issue in this appeal is very clear and the language is plain. The General Assembly used the specific words account, voucher or contact. Appellant urges a broad and expansive reading of this definition to include any and all records which might exist as a result of an account, voucher or contract. That cannot be done when the wording of the statute is free from ambiguity and constrains the definition of a financial record. If the General Assembly wished a more encompassing definition of financial record, it would most certainly have used different language.

Although the Act is new and recently became effective, the definition of a financial record contained therein is not new and it is not without judicial

interpretation. The identical definition was contained in the prior Right-to-Know Law which was repealed by the present Act. Act of June 21, 1957, P. L. 390, as amended, 65 P.S. §66.1 et seq. Section 1 of that prior law defined a public record as:

> "Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property..."

The General Assembly reenacted the identical language in the new Act knowing that the courts had already provided some guidance concerning the words account, voucher and contract.

In Sapp Roofing Company, Inc. V. Sheet Metal Workers' International Association, Local Union No. 12, 552 Pa. 105, 713 A.2d 627 (1998), a plurality of our Supreme Court found that this definition of "account, voucher or contract" would include a copy of a private contractor's payroll in possession of a school district. The records were accessible because they evidenced a disbursement of funds by the school district.

A year later, in North Hills News Record v. Town of McCandless, 555 Pa. 51 at 55, 722 A.2d 1037 at 1039 (1999), the Court adopted the reasoning in Sapp stating,

> "Implicit in the Court's decision in Sapp Roofing is the conclusion that the accounts/vouchers/contracts category of public records reaches some range of records beyond those which on their face constitute actual accounts, vouchers or contracts. Nevertheless, it is clear from

> Sapp Roofing that, to constitute a public record, the material at issue must bear a sufficient connection to fiscally related accounts, vouchers or contracts."

Finally, in LaValle v. Office of General Counsel of the Commonwealth, 564 Pa. 482, 769 A.2d 449 (2001), the Court again stated that there must be a close relationship between the records sought and the account, voucher or contract before the record could be an accessible public record. At issue was an audit report prepared for the Commonwealth.

In this line of cases, the Court was dealing, in each instance, with a request for access to one record. The Court examined each of these specific records individually. Although the Court was willing to look beyond the words "account, voucher and contract" to a limited extent, the requested record still needed to be substantially intertwined or have a close nexus with an account, voucher or contract.

In the present case, Appellant is not seeking access to a specific record. It would appear that he is not even seeking access to a compete class of records. Rather, he is seeking access to any document or record which may exist as a result of the transactions of leasing two senatorial district offices. The records sought by Appellant would not cause any disbursement of money by the Senate. Any disbursement of funds would be in accordance with and pursuant to the actual leases or contracts which must speak for themselves. An expansive reading of the

Act is not warranted based on either statutory construction or judicial precedent..

Appellant cites a prior request for copies of service purchase contracts made by a different individual. Along with copies of the actual contract, the Senate's Open Records Officer also supplied copies of various memos. Appellant has supplied copies of these memos with his filing and has urged that the Senate be ordered to continue this "past practice."

The memos supplied by Appellant were indeed very closely related to the service purchase contract. In fact, they amended the terms of the contract by extending or renewing the contract and causing the further disbursement of Senate funds. These are exactly the type of individual records it seems the Court would be willing to accept as accessible financial records even though not facially an account, voucher or contract. Further, it shows a good faith compliance with the existing law by the Open Records Officer to supply these ancillary documents. However, I cannot find that such a practice should now compel the Open Records Officer to go further and release all records or documents which might exist pertaining to the leasing transactions.

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ORDER

AND NOW, this 23rd day of November, 2009, the decision of the Senate's Open Records Officer is affirmed. Copies of any memorandums, communications, notes, letters, instructions, e-mails or other correspondence between a senator or his staff and the Senate Chief Clerk's office regarding leases of district offices are not accessible legislative records.

Mark R. Corrigan
Senate Appeals Officer