

IN THE SENATE OF PENNSYLVANIA

Appeal of Nicholas

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Senate RTK Appeal 05-2009

OPINION

November 9, 2009

Statements of Fact

By letter dated October 5, 2009, Mr. Edward J. Nicholas (Appellant),
sought access to copies of what appear to be various laws of this Commonwealth.¹

By letter dated October 6, 2009, the Senate's Open Records Officer, W. Russell

¹Appellant's note specifically requests:

"(1) 10.57

Sovereign Immunity Act

*Categories of Damages Allowable

#Tort Claims 42 Pa.C.S.A. 8528©

(2) 42 PaC.S.A. 8553

Local governments defendant(s)

\$500,000 per claim

see Malen & Smith, Legal Malpractice

(Westlaw Practice Bk 3)

(3)(A) Title 13 PaC.S.A. 3-505

(3)(B) Title 13 PaC.S.A. 1-202

(4) Requestor requests for a copy of;

(A) the Privacy Act of 1974,

(B) Act 3 2008 R.T.K. Legislation"

Faber, denied the request stating that the requested records were not legislative records. The denial was appealed to this office by letter dated October 17, 2009 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).

Discussion

The Act provides different types of access to different types of records of Commonwealth agencies, local agencies, legislative agencies and judicial agencies. This appeal deals solely with access provided by a legislative agency to legislative records.

No body of jurisprudence interpreting this Act has been developed. However, in construing any statute, it is a basic premise of law 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). This case can be resolved by applying these legal principles to the existing factual situation.

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." The Act is clear and unambiguous. If the copies of the various laws of this Commonwealth are legislative records, then Appellant should be granted access to such records.

Section 102 of the Act defines the term "legislative record" in a very specific and exhaustive manner. There are nineteen different types of legislative documents listed which would be accessible by the public as legislative records pursuant to the Act.²

² "Legislative record." Any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

- (1) A financial record.
- (2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.
- (3) Fiscal notes.
- (4) A cosponsorship memorandum.
- (5) The journal of a chamber.
- (6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
- (7) The transcript of a public hearing when available.
- (8) Executive nomination calendars.
- (9) The rules of a chamber.
- (10) A record of all recorded votes taken in legislative session.
- (11) Any administrative staff manuals or written policies.
- (12) An audit report prepared pursuant to the act of June 30, 1970 (P.L. 442, No. 151) entitled, "An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the

Nowhere in this list of accessible legislative records is found the mention of the laws of this Commonwealth. It would seem clear and unambiguous that it was not the intention of the General Assembly to make such a general class of records into accessible legislative records under these provisions of the Act.

Appellant has offered no reason whatsoever why the denial of the Open Records Officer was in error. Rather, the instrument of appeal simply states as a legal conclusion that the "... records are in fact public records, and are a financial record."

Insofar as public records are concerned, this office has no jurisdiction to decide what is or what is not a public record. Section 102 of the Act defines a public record as, "A record, including a financial record, of a Commonwealth or

Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission."

(13) Final or annual reports required by law to be submitted to the General Assembly.

(14) Legislative Budget and Finance Committee reports.

(15) Daily legislative session calendars and marked calendars.

(16) A record communicating to an agency the official appointment of a legislative appointee.

(17) A record communicating to the appointing authority the resignation of a legislative appointee.

(18) Proposed regulations, final form regulations and final-omitted regulations submitted to a legislative agency.

(19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

local agency..." The Senate is a legislative agency and not a Commonwealth or local agency. As such, the Senate is required by the Act to provide access to legislative records not public records.

Falling within the definition of an accessible legislative record is a financial record defined in Section 102 of the Act as:

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

As duly noted by the Open Records Officer, Appellant has not requested access to any information or records about financial transactions of the Senate. Appellant has not cited any authority or reasoning for the stated conclusion that copies of the laws he seeks are financial records of the Senate. I know of no such authority and conclude that the records sought by Appellant are not accessible financial records.

Finally, it must be noted that in his denial, the Open Records Officer also took the opportunity to advise Appellant that even though the records he sought were not accessible legislative documents, they may well be accessible public records. Appellant was advised to seek his records by making a request with another open records officer. Instead, Appellant elected to pursue this route of appealing the denial. I repeat the sage counsel already offered Appellant. He may well find that these are accessible public records in another forum.

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ORDER

AND NOW, this 9th day of November, 2009, the decision of the Senate's Open Records Officer is affirmed. Copies of various laws of this Commonwealth are not accessible legislative records.



Mark R. Corrigan
Senate Appeals Officer