

- (a) The defamatory character of the communication;
 - (b) Its publication by the defendant;
 - (c) Its application to the plaintiff;
 - (d) The recipient's understanding of its defamatory meaning;
 - (e) The recipient's understanding of it as intended to be applied to the plaintiff;
 - (f) Special harm resulting to the plaintiff from its publication;
 - (g) Abuse of a conditionally privileged occasion.
- (2) In an action for defamation, the defendant has the burden of proving, when the issue is properly raised:
- (a) The truth of the defamatory communication;
 - (b) The privileged character of the occasion on which it was published;
 - (c) The character of the subject matter of defamatory comment as of public concern.

Act effective immediately.

Section 2. The provisions of this act shall become effective immediately upon final enactment.

APPROVED—The 21st day of August, A. D. 1953.

JOHN S. FINE

No. 364

AN ACT

To further amend the act, approved the twenty-third day of June, one thousand nine hundred thirty-one (Pamphlet Laws 932), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," by further providing for filling of vacancies in certain offices, and for notice and publication of fire protection codes and ordinances; authorizing borrowing by cities in anticipation of current revenue and for permanent improvements without issuance of bonds; increasing the criminal jurisdiction of the mayor as an alderman; authorizing appropriations of council to cover certain contracts which may be awarded without additional advertising; authorizing certain street construction and improvement by city employes, and the sale of real estate by the city at public sales; providing for payment by the city of certain costs in connection with shade trees; and further regulating purchases and contracts.

"The Third Class City Code."

Sections 801, 802 and 1014, act of June 23, 1931, P. L. 932, as reenacted and amended by act of June 28, 1951, P. L. 662, further amended.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 801, 802 and 1014 of the act, approved the twenty-third day of June, one thousand nine hundred thirty-one (Pamphlet Laws 932), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), are hereby further amended to read as follows:

Section 801. Vacancies in Council and Office of Mayor.—If a vacancy exists in the city council, whether as to the office of mayor or one or more of the other members of council, the city council shall, by a majority of its remaining members, fill such vacancy, within thirty days thereafter, by electing a qualified person to serve until that first Monday of January when his successor who shall have been elected by the qualified electors at the next municipal election, occurring at least [ninety] *thirty* days after such vacancy exists, is duly sworn into office for the remainder of the term of the person originally elected to said office.

In case vacancies should exist whereby the offices of three or four of the five members of the city council become vacant, the remaining one or two members shall fill such vacancies, one at a time, giving each new appointee such reasonable notice of his appointment as will enable him to meet and act with the then qualified member or members of the city council in making further appointments until three members of city council have been qualified, whereupon the said three members shall fill the remaining vacancies at a meeting attended by the said three members of said city council, such appointees to receive a majority of the votes of the said three members present at any such meeting. The person or persons selected to fill such vacancy or vacancies shall hold their offices as herein provided.

If, by reason of a tie vote, or otherwise, such vacancy shall not have been filled by the remaining members of city council within the time as limited herein, the court of common pleas, upon the petition of ten or more qualified electors, shall fill such vacancy by the appointment of a qualified person, for the portion of the unexpired term as above provided.

If at any time vacancies should occur or exist in the membership of all five members of city council, the court of common pleas shall appoint a city council, including a mayor, of persons properly qualified, who shall serve as herein provided.

Section 802. Vacancy in Office of Controller or of Treasurer.—If a vacancy occurs in the office of city controller or in the office of city treasurer, the city council shall fill such vacancy, within thirty days thereafter, by choosing a city controller or a city treasurer, as the case may be, to serve until his successor is elected by the qualified electors at the next municipal election, occurring at least [one hundred and twenty] *two hundred* days after such vacancy occurs, and is duly sworn into office. The person so elected shall serve for a term of four years from the first Monday of January next

succeeding his election [until the first Monday of January in the fourth year thereafter] *for the remainder of the term of the person originally elected to such office.*

Section 1014. Time of Taking Effect of Ordinances; Publication; Recording; Proof and Evidence; Notice of Building and Zoning Ordinances, Maps and Plans.—All ordinances shall, unless otherwise provided therein or by law, take effect in ten days after their passage, upon their being signed by the mayor and attested by the city clerk. Every ordinance, except as otherwise herein provided, prescribing a penalty for the violation thereof shall be forthwith published at least three times, each publication on a different day, in at least one and not more than two newspapers printed or circulated within the city, in the manner provided by section one hundred and nine of this act. All ordinances shall, within one month after their passage, be certified and recorded by the city clerk, in a book provided by the city for that purpose, which shall be at all times open to the inspection of citizens. All ordinances, resolutions, motions or other proceedings of council may be proved by the certificate of the city clerk under the corporate seal, and when printed or published in book or pamphlet form by authority of the city, shall be read and received as evidence in all courts and elsewhere without further proof. At least one week and not more than three weeks prior to the first reading of any proposed building code, ordinance, *fire prevention code, ordinance* or zoning ordinance by council, an informative notice of intention to consider such ordinance and a brief summary setting forth the principal provisions of the proposed ordinance in such reasonable detail as will give adequate notice of its contents, pursuant to a uniform form, which shall be prepared or approved by the Department of Internal Affairs in the case of a zoning ordinance, [or] the Department of Labor and Industry in the case of a building code, *or the Pennsylvania State Police in the case of a fire prevention code*, and a reference to the place or places within the city where copies of the proposed building code, *fire prevention code* or zoning ordinance may be examined or obtained, shall be published in the manner herein provided for the publication of ordinances. Such building code, ordinance, *fire prevention code, ordinance* or zoning ordinance shall not be published after adoption, but not less than three copies thereof shall be made available for public inspection and use during business hours for at least three months after adoption, and printed copies thereof shall be supplied upon demand, at cost. In any case in which maps, plans or drawings of any kind are to be adopted as part of an ordinance, council may, instead of publishing the same

as part of the ordinance, refer, in publishing the ordinance or a summary thereof, to the place where such maps, plans or drawings are on file and may be examined.

Section 2. Article XVIII of said act, as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), is hereby further amended by adding, after section 1811 thereof, two new sections to read as follows:

Section 1811.1. Temporary Debt for Permanent Improvements, etc.; Payment.—Cities may borrow money for permanent improvements where no bond issue has been previously authorized, and all such moneys for which an obligation or obligations other than bonds have been issued shall, unless refunded by the issue of bonds, be paid within three years from date of issue of such obligation, together with interest, and at least one third of the total principal of the original loan shall be paid annually. Such obligation or obligations may be paid in full or in part each year when the taxes are received, and reborrowed again the latter part of the fiscal year: Provided, That the amount reborrowed is less than the amount borrowed the preceding year by at least one-third of the total amount of the original loan. Each time the money is reborrowed, the date and purpose for which it was originally borrowed shall be restated. The amount of the original loan shall be paid in full within a maximum term of three (3) years from the date of the original loan for such purpose, unless funded as hereinbefore provided.

Section 1811.2. Borrowing in Anticipation of Current Revenue.—Cities may borrow money in anticipation of current revenues to an amount not exceeding such anticipated current revenues, which shall be pledged for the payment of such loan or loans, and issue notes or other form of obligation, executed by the director of the Department of Accounts and Finance and attested by the mayor under the seal of the city, securing such loans. Such notes or other form of obligation shall mature and be payable during the current fiscal year in which such money is borrowed. No such borrowing shall constitute an increase of indebtedness within the meaning of Article nine, section eight of the Constitution of Pennsylvania, or of the "Municipal Borrowing Law" of June twenty-fifth, one thousand nine hundred forty-one (Pamphlet Laws 159), or of any of the provisions of this act, and shall not require the approval of the Department of Internal Affairs. Such notes shall bear interest at a rate not exceeding six (6) per centum per annum, payable at maturity or in advance, and may be sold at either public or private sale for not less than par. If such loans are not repaid in whole or in part dur-

Article XVIII, said act, as reenacted and amended by act of June 28, 1951, P. L. 662, further amended by adding, after section 1811 thereof, two new sections numbered 1811.1 and 1811.2.

ing the fiscal year in which they are made, they, or such amounts as remain unpaid, shall become an obligation upon the following year's budget and shall be included therein and paid not later than the thirty-first day of December of such following year. The incurring of such obligations shall receive the affirmative vote of not less than two-thirds of the members of the city council.

Section 1207,
said act, as
reenacted and
amended by act
of June 28, 1951,
P. L. 662,
further amended.

Section 3. Section 1207 of said act, as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), is hereby further amended to read as follows:

Section 1207. Criminal and Civil Jurisdiction; Docket; Fees.—The mayor shall have the criminal jurisdiction of an alderman within the city [to enforce the ordinances of the city and collect fines and penalties imposed thereunder, or to sentence violators, to *suppress riots, tumults and disorderly meetings,] and *as to persons and acts* in or upon properties within the Commonwealth owned or controlled by the city or by any municipality authority of the city; and shall have no civil jurisdiction except in relation to actions for penalties, or forfeitures imposed by virtue of the ordinances of the city or the laws of the Commonwealth relating thereto.

He shall have the power of a committing magistrate under the acts of Assembly relating to tramps, vagrants, dissolute, disorderly and drunken persons, as may be provided by law.

He shall be empowered to take acknowledgments of any instruments in writing, pertaining to the business of the city, solemnize marriages, and administer oaths and affirmations, as to city business, and shall attest all his acts with his official seal. He shall keep a docket, and shall enter therein all actions and proceedings had before him; and said docket with the entries therein, and duly certified transcripts thereof, shall be received in evidence in the same manner and with like effect as the docket entries and transcripts of aldermen are by law admissible for similar purposes.

He shall charge and receive for all official services the same fees and costs as are allowed by law to aldermen of the city for similar services, but shall pay over the same into the city treasury monthly, according to the statements thereof, verified by his oath or affirmation taken before the director of accounts and finance, and filed with him.

First paragraph
of section 1901,
said act, as last
amended by act
of September 26,
1951, P. L. 1515,
further amended.

Section 4. The first paragraph of section 1901 of the act, as last amended by the act, approved the twenty-sixth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1515), is hereby further amended to read as follows:

* "supress" in original.

Section 1901. Power to Make Contracts; Regulations Concerning Contracts.—Each city may make contracts for carrying into execution the provisions of this act and the laws of the Commonwealth. The council shall, by ordinance, provide for and regulate the award of all contracts. No contract shall be entered into or purchase made by the city in an amount involving more than two hundred dollars except upon council's approval thereof. *All contracts or purchases not in excess of seven hundred fifty dollars shall be by *note or memorandum in writing, signed by the officer or employe making the purchase or contract.*

Section 5. Section 1906 of said act, as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), is hereby further amended to read as follows:

Section 1906. Designation of Appropriations; Certification in Excess of Appropriation; Contracts for Governmental Services for More than One Year.—Every contract involving an appropriation of money shall designate the item of appropriation on which it is founded, and the estimated amount of the expenditure thereunder shall be charged against such item, and so certified by the director of accounts and finance on the contract before it shall take effect as a contract. The payments required by such contract shall be made from the fund appropriated therefor. *In any case where the lowest responsible bid is in excess of the item of appropriation on which the contract is to be founded, the item of appropriation may be increased by council in the amount necessary to cover the bid, and the contract may be awarded and certified without any additional advertising.* If the director of accounts and finance shall certify any contract in excess of the appropriation made therefor, the city shall not be liable for such excess, but the director of accounts and finance shall be liable for the same, which may be recovered in an action at law by the contracting party aggrieved. But nothing herein contained shall prevent the making of contracts for governmental services for a period exceeding one year, but any contract so made shall be executory only for the amounts agreed to be paid for such services to be rendered in succeeding fiscal years.

It shall be the duty of the director of accounts and finance to certify contracts for the payment of which sufficient appropriations have been made.

Section 6. Article XIX of said act, as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), is hereby further amended by adding, at the end thereof, a new section to read as follows:

Section 1906, said act, as reenacted and amended by act of June 28, 1951, P. L. 662, further amended.

Article XIX, said act, as reenacted and amended by act of June 28, 1951, P. L. 662, further amended by adding, at end thereof, a new section numbered 1918.

* "vote" in original.

Section 1918. Street Construction and Improvement by City Employes.—Any city may use the work or services of its employes in the construction or improvement, for a distance of not over six hundred (600) feet, of any public street within its territorial limits, but shall be subject to the limitations and duties imposed by this article in the purchase of any materials for such construction or improvement. The provisions of this section shall not be construed to affect or limit the provisions of Article XXIX of this act.

Sections 2561 and 3807, said act, as reenacted and amended by act of June 28, 1951, P. L. 662, further amended.

Section 7. Sections 2561 and 3807 of said act, as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), are hereby further amended to read as follows:

Section 2561. Sale Procedure.—After an ordinance has been passed authorizing and directing the sale of real estate as provided for in section two thousand five hundred sixty, the city treasurer shall advertise such proposed sale once a week for three successive weeks in at least one newspaper of general circulation in the city. The advertisement shall give a brief description of the property to be sold sufficient to identify it as to location and character, and the terms and conditions of sale shall ask for sealed bids for the purchase thereof, direct all bids to be sent to the city clerk on or before a certain date, and give any other information relating to such bids as may be necessary; shall announce that the bids shall be opened and read at a public meeting of council to be held at a time fixed, and that council shall have the right to reject any and all bids. *In lieu of the above contents of the advertisement, the advertisement may give a brief description of the property to be sold, sufficient to identify it as to location and character, and provide for a public sale of the property to the highest responsible bidder, at such time and place as shall be designated by council, with the right reserved to council to reject any and all bids.*

Section 3807. Payment by Owners.—The cost of furnishing, planting, [transplanting] *transplanting*, or removing any shade trees in or along the streets of the city, of the necessary and suitable guards, curbing, or grading for the protection thereof, and of the replacing of any pavement or sidewalk necessarily disturbed in the execution of such work, shall be paid by the owner of the real estate in front of whose property the work is done, *except that part of such cost may be certified by the commission to council and to the city treasurer as a charge to be paid by the city.*

The amount each owner is to pay shall be ascertained and certified by the commission to council and to the city treasurer.

APPROVED—The 21st day of August, A. D. 1953.

JOHN S. FINE

No. 365

AN ACT

To amend section eight hundred twelve of the act, approved the twelfth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 533), entitled "An act relating to mental health, including mental illness, mental defect, epilepsy and inebriety; and amending, revising, consolidating and changing the laws relating thereto," by providing for the appointment of guardians of patients' funds and imposing duties and limitations in certain cases.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section eight hundred twelve of the act, approved the twelfth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 533), entitled "An act relating to mental health, including mental illness, mental defect, epilepsy and inebriety; and amending, revising, consolidating and changing the laws relating thereto," is hereby amended to read as follows:

Section 812. Payment of Cash Balance to Patient at Discharge.—(a) Upon discharge from an institution, the superintendent shall determine whether any balance to the credit of a patient shall be immediately paid over to the discharged patient or his guardian, or shall be held in trust by the treasurer of the institution until such time as, in the judgment of the department, it would serve the best interests of the patient to pay to him or to his guardian the balance or any part thereof.

(b) *Notwithstanding the provisions of any other law relating to the property of an incompetent, whenever the money, gifts, legacies, pensions, insurance payments, retirement benefits or payments, old-age and survivors insurance, or any other benefits or payments which a resident or nonresident incompetent who is an inmate of an institution and for whom no guardian has been appointed may possess or to which he may be entitled, amount at any one time to not more than five hundred dollars (\$500), the authorized agent of the Department of Revenue, appointed by virtue of the provisions of The Fiscal Code, the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 343), shall have the following powers and duties:*

"The Mental Health Act of 1951."

Section 812, act of June 12, 1951, P. L. 533, amended.