

No. 1996-172

AN ACT

HB 685

Amending the act of May 1, 1933 (P.L.103, No.69), entitled, as reenacted and amended, "An act concerning townships of the second class; and amending, revising, consolidating and changing the law relating thereto," further providing for auditors, for board of supervisors, for appointment of accountant, for personal property, for regulation of business, for ordinances, for appointment of police, for special fire police, for letting contracts and for liens for assessments.

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

Section 1. Sections 404(b), 602(a), 917(b), 1504(a), 1532(b), 1601, 1902, 1914, 2510, 2614 and 3102(h) of the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, reenacted and amended November 9, 1995 (P.L.350, No.60), are amended to read:

Section 404. Auditors.—* * *

(b) No auditor shall at the same time hold any other elective or appointive township office or position *or be an employe of the township for which he has been elected or appointed.*

* * *

Section 602. Organization Meeting; Appointment of Secretary and Treasurer.—(a) The board of supervisors shall meet at a convenient time and place on the first Monday in January of each year. If the first Monday is a legal holiday, the meeting shall be held the following day. The board of supervisors shall elect one member as chairman and another as vice-chairman, and it shall appoint a treasurer and a secretary. The secretary shall be an individual; however, the board of supervisors may select either a trust company, a banking institution or an individual to serve as treasurer, or the board of supervisors may appoint one individual to serve as both secretary and treasurer. Members of the board of supervisors may be appointed as secretary-treasurer, secretary or treasurer. *With regard to boards of supervisors which are designated as three-member boards, any supervisor who is to be considered by the board for any appointed township position or for employment by the township as authorized by law shall not be excluded from voting on the issue of such appointment or employment. Action taken by a supervisor shall be deemed to be within the scope of authority as a supervisor and shall not be deemed to constitute an illegal or an improper conflict of interest.*

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Section 917. Appointment of Accountant.—* * *

(b) (1) Subject to the provisions of paragraph (2), at its annual organization meeting, *or anytime thereafter*, the board of supervisors may by

resolution appoint a certified or competent public accountant or a firm of certified or competent public accountants, either of which shall be registered in this Commonwealth, to make an examination of all the accounts of the township for the [next] fiscal year stated in the resolution. The board of supervisors shall determine the compensation of the appointed accountant.

(2) At least thirty days prior to the organizational meeting or thirty days prior to any vote to appoint a certified or competent public accountant or a firm of certified or competent public accountants to replace the elected auditors, the board of supervisors shall advertise in a newspaper of general circulation the intent to appoint a certified or competent public accountant or a firm of certified or competent public accountants to replace the elected auditors.

* * *

Section 1504. Personal Property.—(a) No personal property of the township shall be sold or disposed of without the approval of the board of supervisors. No personal property owned by the township, the estimated fair market value of which is one thousand dollars (\$1,000) or more, shall be sold except to the highest bidder after due notice by advertisement for bids or for public auction in one newspaper of general circulation in the township. The advertisement shall be published once not less than ten days before the date set for the opening of bids or public auction, and the date for opening bids or public auction shall be announced in the advertisement. *If after attempting twice to receive bids or if at a public auction no bid was received, the board of supervisors may by resolution adopt a procedure by which the personal property may be sold without further action of the board of supervisors. A procedure adopted pursuant to this authorization shall be subject to and shall conform with the requirements of any law governing the sale of property by municipal corporations generally when no bids have been received.* The award of contracts shall be made only by public announcement at a regular or special meeting of the board of supervisors or at the public auction. All bids shall be accepted on the condition that payment of the purchase price in full is made immediately upon acceptance of the successful bid. The board of supervisors may reject any bids received if the bids are believed to be less than the fair market value of the property.

* * *

Section 1532. Regulation of Business.—* * *

(b) The board of supervisors may establish license fees for regulated businesses enumerated in subsection (a). These fees shall bear a reasonable relationship to the cost of administering the ordinance and regulating, inspecting and supervising each business. [A] *Licenses may be issued on an annual or monthly basis and any fee charged to transient merchants shall not exceed three hundred dollars (\$300) per year or twenty-five dollars (\$25) for each month or part of a month.*

Section 1601. Ordinances.—(a) The board of supervisors may adopt ordinances in which general or specific powers of the township may be

exercised, and, by the enactment of subsequent ordinances, the board of supervisors may amend, repeal or revise existing ordinances. All proposed ordinances, whether original, amended, repealed, revised, consolidated or codified, shall be published not more than sixty days nor less than seven days before passage at least once in one newspaper circulating generally in the township. Public notices shall include either the full text or a brief summary of the proposed ordinance which lists the provisions in reasonable detail and a reference to a place within the township where copies of the proposed ordinance may be examined. If the full text is not included, a copy shall be supplied to the publishing newspaper when the notice is published, and an attested copy shall be filed within thirty days after enactment in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing the ordinances. The date of such filing shall not affect the effective date of the ordinance, the validity of the process of the enactment or adoption of the ordinance; nor shall a failure to record within the time provided be deemed a defect in the process of the enactment or adoption of such ordinance. If substantial amendments are made in the proposed ordinance, before voting upon enactment, the board of supervisors shall at least ten days before enactment readvertise in one newspaper of general circulation in the township a brief summary setting forth all the provisions in reasonable detail, together with a summary of the amendments. Ordinances shall be recorded in the ordinance book of the township and are effective five days after adoption unless a date later than five days after adoption is stated in the ordinance.

(b) When maps, plans or drawings of any kind are adopted as part of an ordinance, instead of publishing them as part of the ordinance, the board of supervisors may refer in publishing the ordinance to the place where the maps, plans or drawings are on file and may be examined.

[(c) The board of supervisors may prescribe fines not exceeding one thousand dollars (\$1,000) for a violation of a building, housing, property maintenance, health, fire or public safety code or ordinance and for water, air and noise pollution violations and not exceeding six hundred dollars (\$600) for a violation of any other township ordinance. Any person who violates or permits the violation of a township ordinance shall, upon being found liable therefor in a civil enforcement proceeding commenced by a municipality, pay the fine set by the board of supervisors plus all court costs, including reasonable attorney fees, incurred by a municipality. No judgment shall be imposed until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the municipality may enforce the judgment pursuant to the applicable rules of civil procedure.]

(c.1) An ordinance enacted by the board of supervisors pursuant to this act shall prescribe the fines and penalties which may be imposed for its

violation and shall, unless otherwise specified in another statute, designate the method of its enforcement in accordance with the following:

(1) Civil enforcement.—Except as provided in paragraph (2), when the penalty imposed for the violation of an ordinance enacted pursuant to the provisions of this act is not voluntarily paid to the township, the township shall initiate a civil enforcement proceeding before a district justice. The civil enforcement proceeding shall be initiated by complaint or by such other means as may be provided by the Pennsylvania Rules of Civil Procedure. An ordinance which is to be enforced through a civil enforcement proceeding may prescribe civil penalties not to exceed six hundred dollars (\$600) per violation. In addition to or in lieu of civil actions before a district justice, townships may enforce ordinances in equity. In any case where a penalty for a violation of a township ordinance has not been timely paid and the person upon whom the penalty was imposed is found to have been liable therefor in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for continuing violations, plus court costs and reasonable attorney fees incurred by the township in the enforcement proceedings. A township shall be exempt from the payment of costs in any civil case brought to enforce an ordinance in accordance with this paragraph.

(2) Enforcement as summary offenses.—For an ordinance regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution, the board of supervisors shall provide that its enforcement shall be by action brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. The municipal solicitor may assume charge of the prosecution without the consent of the District Attorney as required under Pa.R.Crim.P. No. 83(c) (relating to trial in summary cases). The board of supervisors may prescribe criminal fines not to exceed one thousand dollars (\$1,000) per violation and may prescribe imprisonment to the extent allowed by law for the punishment of summary offenses.

(3) Existing ordinances.—With regard to ordinances enacted prior to May 7, 1996, those regulating building, housing, property maintenance, health, fire, public safety, parking, solicitation, curfew, water, air or noise pollution shall be deemed automatically amended so that they shall be enforced by an action brought before a district justice in the same manner provided for the enforcement of summary offenses in accordance with paragraph (2). All other ordinances enacted prior to May 7, 1996, shall be deemed automatically amended so that they shall be enforced through a civil enforcement proceeding in accordance with paragraph (1).

(4) Enforcement in equity.—Ordinances may be enforced by a township through an action in equity brought in the court of common pleas of the county where the township is situate.

(5) *Separate offenses.*—*Ordinances may provide that a separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of the ordinance which is found to have been violated.*

(6) *Payment to treasurer.*—*All fines and penalties collected for the violation of any township ordinance shall be paid to the township treasurer.*

(7) *Enforcement officers or agents.*—*The board of supervisors may delegate the initial determination of ordinance violation and the service of notice of violation to such officers or agents as the township shall deem qualified for that purpose.*

(d) The board of supervisors may prepare or have prepared a consolidation or codification of the general body of township ordinances or the ordinances on a particular subject. The board of supervisors may adopt the consolidation or codification as an ordinance of the township, except the required advertised notice of the proposed adoption of the consolidation or codification shall include a listing of its table of contents. The procedure for the consolidation or codification of township ordinances as a single ordinance may also be followed in enacting a complete group or body of ordinances repealing or amending existing ordinances as may be necessary in the course of preparing a consolidation or codification of the township ordinances, except that the advertisement giving notice of the proposed adoption shall list, in lieu of a table of contents, the titles only of each of the ordinances in the complete group or body of ordinances.

(e) In the same manner as other ordinances, the board of supervisors may adopt, by reference to a standard or nationally recognized code in a township ordinance, all or any portion of the code as an ordinance of the township. No portion of any code which limits the work to be performed to any type of construction contractor or labor or mechanic classification shall be adopted. Copies of the proposed code or portion or amendment shall be filed with the township secretary at least ten days before the board of supervisors considers the proposed ordinance and upon enactment kept with the ordinance book and available for public use, inspection and examination.

(f) Any person aggrieved by the adoption of any ordinance may make complaint as to the legality of the ordinance to the court of common pleas.

Section 1902. Appointment of Police.—The board of supervisors shall provide for the organization and supervision and determine the number and the compensation of the police officers. *The position of police officer is incompatible with the office of supervisor, auditor, tax collector, assessor and manager.* The chairman of the board of supervisors may swear in police officers. The board of supervisors may assign any police officer to undergo a course of training at any training school for police officers established or made available by the Federal or State Government and provide for payment of the officer's expenses while in attendance at the training school.

Section 1914. Special Fire Police.—The board of supervisors may confirm any members of a volunteer fire company to serve as special fire police under

the act of June 18, 1941 (P.L.137, No.74), entitled, as amended, "An act providing for the appointment, powers and control of members of volunteer fire companies as special fire police, and conferring powers on them at fires attended by their fire companies in any city, borough, town, township or home rule municipality." *The chairman of the board of supervisors may swear in special fire police officers.*

Section 2510. Liens for Assessments; Costs of Proceedings.—After the amount of the assessment charged upon the several properties has been established by resolution making assessments according to [frontage] *section 2508* or by confirmation of any report of viewers, in whole or in part, the amounts of all assessments are payable to the township treasurer for the use of the sanitary sewer district or districts or the township in which they are assessed. The board of supervisors shall make out bills for the amounts charged against each property, which shall be sent to all property owners whose property will be served by the sanitary sewer system. If the assessment is not paid within sixty days after the mailing of a bill therefor, the board of supervisors shall collect it by action of assumpsit or under law for the filing and recovery of municipal claims.

Section 2614. Liens for Assessments; Costs of Proceedings.—After the amount of the assessment charged upon the several properties has been established by resolution making assessments according to [frontage] *section 2612* or by confirmation of any report of viewers, in whole or in part, **[the board of supervisors shall file municipal liens for the assessments covered by the resolution or confirmation. The amounts of all assessments are payable to the township treasurer. The board of supervisors shall also make out bills for the amount charged against each property, which shall be sent to all property owners.]** *the amounts of all assessments are payable to the township treasurer for the use of the township in which they are assessed. The board of supervisors shall make out bills for the amounts charged against each property, which shall be sent to all property owners whose property will be served by the water system. If the assessment is not paid within sixty days after the mailing of a bill therefor, the board of supervisors shall collect it by action of assumpsit or under law for the filing and recovery of municipal claims.*

Section 3102. Letting Contracts.—* * *

(h) The contracts or purchases made by the board of supervisors involving payments in excess of the required advertising amount, which do not require advertising, bidding or price quotations are as follows:

(1) Those made for emergency, *or routine maintenance*, repairs or replacements for water, electric light and other public works of the township if they do not constitute new additions, extensions or enlargements of existing facilities and equipment.

(2) Those made for improvements, repairs or maintenance of any kind made or provided by any township through its own employes. All contracts or purchases of materials used for improvement, maintenance or construction

in excess of four thousand dollars (\$4,000) but less than the required advertising amount are subject to the provisions contained in subsection (b), and those contracts or purchases in excess of the required advertising amount are subject to the advertising requirements contained in subsection (a).

(3) Those involving any policies of insurance or surety company bonds, those made for public utility service and those made with another municipal corporation, county, school district or municipality authority or Federal or State Government, including the sale, leasing or loan of any supplies or materials by the Federal or State Government or their agencies.

(4) Those involving personal or professional services.

(5) Those made for materials and supplies or equipment rental under emergency conditions under 35 Pa.C.S. Pt. V (relating to emergency management services).

(6) Those contracts involving equipment rental with operators if more than fifty percent of the total labor personnel hours required for the completion of the contract is supplied by the township through its own employees.

(7) Those contracts for the purchase of repair parts or materials for use in existing township equipment or facilities if the item or material to be purchased is the sole item of its kind on the market or is manufactured as a replacement for the original item or equipment being repaired.

(8) Those for used equipment, articles, apparatus, appliances, vehicles or parts thereof being purchased from a public utility.

(9) Those where particular types, models or pieces of equipment, articles, apparatus, appliances, vehicles or parts thereof which are patented and manufactured products.

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Section 2. This act shall take effect in 60 days.

APPROVED—The 18th day of December, A.D. 1996.

THOMAS J. RIDGE