

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY**

**IN THE COURT OF COMMON PLEAS**

**BOARD OF REVISION OF TAXES**

**: TRIAL DIVISION-CIVIL**

**:**

**:**

**VS.**

**: DECEMBER TERM, 2010**

**: NO. 0258**

**CITY OF PHILADELPHIA**

**:**

**: Control #11022146**

**FINDINGS and ORDER**

**AND NOW, this** 17th day of June 2011, pending before this Court are the Preliminary Objections to the Answer with New Matter and Counterclaim of the Defendant, City of Philadelphia, filed by Plaintiffs, the Board of Revision of Taxes, City of Philadelphia (BRT). Defendant City, filed a Response. Both sides filed briefs and this Court had the benefit of Oral Argument.

Prior to discussing the merits of this Action, a brief history is necessary to place the current Action into context. These facts are not in dispute.

The original Complaint in this matter, pursuant to Rule 1512(c), Pa. R.A.P. sought Injunction, Preliminary Injunction, Writs of Prohibition, Mandamus and Quo Warranto and other Relief in Equity. It was filed with the Commonwealth Court. It was dismissed by the Commonwealth Court for lack of jurisdiction and transferred to the Philadelphia County Court of Common Pleas. Plaintiffs did not appeal the Commonwealth Court decision.

On July 26, 2010, Plaintiffs filed an application with the Supreme Court of Pennsylvania, asking that Court to exercise its *King's Bench* power to grant them various forms of relief by way of enjoining the implementation of the Reorganization Ordinance (RO), passed by Defendant City of Philadelphia (CITY), on December 17, 2009, to be effective October 1, 2010 if ratified by the Electorate at the May 2010 Primary Election.

Plaintiffs also sought this same relief as to the Salary Ordinance (SO), which drastically reduced the level of compensation of the BRT Board Members and substantially altered the method of calculating compensation. This Ordinance became effective on April 22, 2010, upon signing by the Mayor of Philadelphia, notwithstanding the fact that the proposed Reorganization Ordinance (RO) would not go into effect for another five and one-half (5 ½ ) months if approved by the Electorate.

The Supreme Court decided to exercise its *King's Bench* powers over the RO but declined to exercise such powers over the SO, allowing Plaintiff's challenge to proceed below which by virtue of the Commonwealth Court's decision referenced above, reposed the matter in this Court.

Procedurally, this matter stands before this Court on Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaim. For reasons that will be discussed below, this Court will only consider those Preliminary Objections in the form of a demurrer pursuant to Pa. R.C.P. 1028(a)(4) to Defendant's Answer.

The relief requested in the instant Preliminary Objections seeks judgment in Plaintiff's favor on certain discrete issues concerning the Constitutionality of the SO. In a strictly technical sense, the relief sought by Plaintiff would not be available unless a Motion for Judgment on the Pleadings was filed pursuant to Pa. R.C.P. 1034.

The City has recognized the procedural issue in its Reponse Brief to the Preliminary Objections and waives any argument regarding same.

. . . Plaintiffs also have included Preliminary Objections to our Answer and New Matter, and Plaintiffs request this Court to "overrule" the City's Answer and New Matter; and to enter judgment on Plaintiffs' underlying Complaint.

We are unaware that such relief is available on Preliminary Objections. As a practical matter, however, we understand Plaintiffs' motion effectively to constitute a request for judgment on the pleadings; and we have no objection to the Court treating Plaintiffs' motion as a request for judgment on the pleadings.

Response Brief of City in Opposition to Plaintiffs' Preliminary Objections at p. 4.

The following analyses will address only those issues raised by Plaintiffs in Objection One.

For purposes of this analysis, this Court will accept the legal issues as framed by Plaintiff in Paragraph 17 and 18 of their Objection One.

In its first theory, the Defendant City sweepingly asserts that BRT members do not qualify as “public officers” under Pa. Const., Art. III § 27. *See, e.g.,* Answer and New Matter, ¶¶ 68-71, 91-97, 142 & 143 (repeating same assertion).

In its second theory, the City asserts that even if BRT members are “public officers” the reduction of their compensation and benefits was exempted from the strict constitutional ban expressed in Art. III, § 27, because the pay-slashing Ordinance was supposedly enacted to reflect an actual reduction in their powers. *See, e.g.,* Answer and New Matter ¶ 67.

Plaintiff Preliminary Objections to the Answer with New Matter and Counterclaim of Defendant City of Philadelphia at p. 4.

The “public officers” issue is first addressed. The “public officers” that this Court shall be discussing are the Members of the Board of Revision of Taxes who have retained all of the appellate duties vested in this Board.<sup>1</sup>

The significance of the term, “public officer” derives from Art. III § 27 of the Pennsylvania Constitution which provides that

No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment. Pa. Const. Art. III, § 27.

In this analysis, we are guided by two (2) recent Pa. Supreme Court decisions which give insight to the public importance of the BRT appellate function and the need to insulate them from the vicissitudes that accompany the “ebb and flow” of municipal legislation.

In *BRT v. City of Philadelphia*, 4 A.3d 610; 2010 Pa. LEXIS 2134, our Supreme Court initially recognized the appellate function of the BRT:

Local agencies that perform formal fact-finding and deliberative functions in a manner similar to that of a court are quasi-judicial bodies.

\* \* \*

The appellate function, although integral to the local taxation process, is a distinctly quasi-judicial review function of the BRT. (Interior citations omitted).

*BRT v. City of Philadelphia, Id.*

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1. The function of the original Board was divided by the RO. The Office of Property Assessment now executes the tax assessment duties. The City’s attempt to create a new Board of Appeal was rejected by the Supreme Court in *BRT v. City of Philadelphia, Id.*

The City of Philadelphia argues that it was empowered to abrogate this quasi-judicial appellate function pursuant to the following statutory language:

Council of the City of Philadelphia shall have full powers to legislate with respect to the election, appointment, compensation, organization, abolition, merger, consolidation, powers, functions and duties of the Sheriff, City Commissioners, Registration Commission and Board of Revision of Taxes or its successor, with respect to the making of assessments of real and personal property as provided by act [ ] of Assembly.

53 P.S. § 13132(c).

Our Supreme Court rejected this argument, first noting that if the Legislature intended to transfer the power to eliminate the BRT completely, it would not have used the “making of assessment” as a qualifier in the statutory provision.

By comparison, the City’s interpretation and construction of Section 13132(c) is that the qualifier comprises the **entirety** of the BRT’s function. But if that were so, the qualifier would be entirely superfluous. In limiting the delegated power only to that part of the BRT’s function which involves “the making of real and personal property assessments,” the General Assembly obviously contemplated that it was preserving some other part of the BRT’s function.

*BRT v. City of Philadelphia, Id.*

Then it concluded that City Council’s transfer of the BRT’s adjudicative function to the Board of Appeals was not authorized by the legislative delegation of power contained in Section 13132(c) and was ultra vires.

. . . .Consequently, we hold that the Reorganization Ordinance is invalid in part. *BRT v. City of Phila., Id.* Considering this, it is clear that both the Supreme Court of Pa., and the Pa. Legislature found the BRT members who perform the appellate function as quasi-judicial officers of significant importance that only an Act of Legislature could abolish the office.

It also found that the Legislature, in enacting the referred to qualification bestowed additional importance to the function.

It is fairly plausible to believe that the statutory qualification also recognized the value of interposing some role for the local Judiciary with respect to the BRT’s “quasi-judicial” appeal function. We recognize the City’s argument that members of other local agencies performing

quasi-judicial functions are appointed exclusively by the executive branch, see, e.g., 53 P.S. § 14757 (mayoral appointment of members to zoning commission), but that point assumes that the General Assembly is obliged to view all such Philadelphia agencies as warranting identical treatment. That clearly is the prerogative of the General Assembly, which in this particular instance singled out the BRT for different treatment. In summary, we find supporting merit in the argument, made by petitioners, that the General Assembly sought to ensure a measure of independence in the BRT by placing appointment of its members in the hands of the Judiciary, and reserving its appellate, quasi-judicial role. (Internal Citation Omitted).

*BRT v. City of Phila., Id.*

In an earlier dispute before the Commonwealth Court, the City filed a Reply Memorandum in which it admitted that the BRT members were “City Officers” (as distinguished from “City Employees”). (City Reply Memorandum, 7/16/2010.) While not dispositive of the issue, it adds weight to Plaintiff’s argument that their duties encompass those which should be recognized and protected under Art. III § 27.

In *Richie v. Philadelphia*, 225 Pa. 511; 74 A. 430 (1909), the issue of when a person is a public officer for purposes of application of certain Constitutional sections was resolved by our Supreme Court.

The case involved a real estate assessor who had been appointed for a five-year term at a salary of \$2000.00 per year. During his term of office, his salary was raised to \$3000.00 per year. The City, (then County), refused to pay and the assessor sued for his increase. The analysis by our Supreme Court was on constitutional grounds under Art. III, § 13 which is identical to Art. III § 27 and was renumbered as § 27 with the 1967 Constitution Amendment. (Art. III § 27, Pa. Constitution).

In every case in which the question arises whether the holder of an office is to be regarded as a public officer within the meaning of the constitution, that question must be determined by a consideration of the nature of the service to be performed by the incumbent and of the duties imposed upon him, and whenever it appears that those duties are of a grave and important character, involving in the proper performance of them some of the functions of government, the officer charged with them is clearly to be regarded as a public one. In the performance of his statutory duties this appellant fixed, in the first instance, the value of properties as the basis upon which they were to be

assessed for the purpose of raising revenues for the maintenance of the city and county governments and the support of the public schools. In passing judgment upon these values it may be said that he exercised semi-judicial functions, the proper exercise of which was of the gravest importance to the entire community.

\* \* \*

Where, however, the officer exercises important public duties and has delegated to him some of the functions of government and his office is for a fixed term and the powers, duties and emoluments become vested in a successor when the office becomes vacant, such an official may properly be called a public officer. The powers and duties attached to the position manifest its character. A consideration of the relations which they sustain to the maintenance of government is of such consequence that they should be considered public officers. The functions which they perform are of prime importance. Their duties are designated by statute; they serve for a fixed period; act under oath, the duties they perform are semi-judicial in character and their services are indispensable in the fiscal system as established by the state.

*Richie v. Philadelphia, Id.*

Considering this analytical framework as established by our Supreme Court, there can be no doubt that the members of the Board of Revision of Taxes, in performing the appellate function of establishing the agency's final tax assessment, are "public officers" within the meaning of Art. III § 27 of the Pa. Constitution.

Having now found that the BRT Members are "public officers," the issue of whether a municipal ordinance which reduces such officers' salary and emoluments during his or her term of office falls within the prohibition of Art. III § 27 needs resolution. To do this, one needs only to look at a case recently decided by the S. Ct. of Pa., In *Buckwalter v. Borough of Phoenixville*, 603 Pa. 534, 988 A.2d 728 (2009), the Court found that all municipalities in Pennsylvania derive their power from the Pennsylvania Legislature and if the Legislature could not alter mid-term, the compensation of a public officer, then municipalities were also governed by the same constitutional limitation of power imposed by Art. III § 27 of the Pa. Constitution.

Therefore, considering this and the record as a whole, the Salary Ordinance insofar as it attempts to reduce the salary and emoluments of the Members of the BRT

during his or her term of office, is found to be in violation of Art. III § 27 and unconstitutional and invalid.

As part of its Answer in this matter, the City claims that the SO was not an unconstitutional reduction of the BRT Members' salary and emoluments because the Ordinance was based upon a reduction in the duties of these Members. This Answer is pretextual because the SO reducing the compensation became effective upon the passage and signing of the Ordinance on April 22, 2010. The RO which was the Ordinance that putatively reduced the Members' duties could not have become effective prior to its effective date of October 1, 2010, which is more than six (6) months after the compensation was reduced. The attempt to tie the compensation reduction to a reduction in duties must fail as a result of being defective on its face.

As explained above, this action before this Court is a Preliminary Objection in the form of a demurrer and the City's Answer as it relates to the narrow issues discussed herein is stricken. Further, since the City has no objection to this Court proceeding to further consider the limited issue as a Motion for Judgment on the Pleadings, Judgment is entered in favor of the Members of the BRT in their individual capacity and against the City of Philadelphia. The practical effect of such ruling is that the salary and emoluments enjoyed by the Members of the BRT must be restored to the level enjoyed at the beginning of their respective terms of office.

All other Preliminary Objections are overruled. The issues raised by the Answer of the City, other than the issues discussed herein are not capable of being determined without resolution of factual issues. This applies to the issues raised by the City in its Counterclaims and New Matter. After further development of the factual record through discovery, Motion for Summary Judgment may be appropriate, but failing that, the parties are entitled to a Trial in Equity on the remaining issues.

**BY THE COURT:**

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**ALLAN L. TERESHKO, J.**

