**SCRANTON TIMES**

**GUEST EDITORIAL**

**JANUARY 3, 2020**

In a decision issued on December 16, 2019, Judge James Gibbons of the Lackawanna County Court of Common Pleas concluded that the City of Scranton violated the provisions of Act 511, also known as the Local Tax Enabling Act, by exceeding the tax limitation provision contained therein. In his opinion, the Court asked the City to set aside excess taxes for each of the years 2015 through 2018, and to reduce taxes accordingly for 2019 and future years. Conservative estimates of the impact of this decision on the City would provide for a financial obligation in excess of $50,000,000, and, if this decision were to stand, it would likely force the City into bankruptcy and result in a drastic reduction, if not elimination, of City services, including fire and police. Fortunately, this is a decision that will likely be set aside by the higher courts.

             Local governments have existed in Pennsylvania since they were authorized in the Charter issued by King Charles, II to William Penn in 1681. Throughout the 19th century, the role of local government was the subject of much jurisprudential debate, specifically as it relates to the duties and responsibilities of local governments in relation to the various states in which they were located. At that time, most states adopted what has been become known as Dillion’s Rule, first espoused by Judge Forest Dillon. Dillon’s Rule provides that local governments derive their powers and rights solely from the state legislature and cannot act without specific legislative authority. In other words, Dillion’s Rule provides that local governments can only do those things that the state legislature has specifically authorized. Another view, which came to be known as the Cooley Doctrine, and first espoused by Thomas M. Cooley, argues that local government exists independent of state legislative authority in relation to how those local governments may manage their local affairs.

In the first half of the 20th Century, the Pennsylvania Supreme Court adopted Dillon’s Rule. However, over time, an increased complexity in local government and the resulting need for flexibility in its operations led many states, including Pennsylvania, to seek a middle ground between Dillon’s Rule and the Cooley Doctrine. Pennsylvania moved in this direction in 1920, when the state constitution was amended to give the state legislature the authority to grant local governments the right to Home Rule, which would allow them to operate free of certain state laws to which they would otherwise be subject. The legislature enacted the Home Rule Law in 1972 and Scranton chose to become a Home Rule municipality under that Law by formally adopting a Home Rule Charter in 1974.

           In the current matter, the Court stressed that the City imposed Act 511 taxes and was therefore bound by the limitations contained therein. However, the Court ignored the provisions of Sections 2963(b), 2963(h) and 2963(i) of the Home Rule Law, which provide that a municipality adopting Home Rule continues to have the right “to levy any tax which it had the power to levy had it not adopted a home rule charter”, and that “no provision of this sub part *or any other statute* shall limit a municipality which adopts a home rule charter from establishing its own rights of taxation.” What this means is that, in enacting the Home Rule Law of 1972, the legislature allowed Home Rule municipalities, including Scranton, to impose Act 511 taxes but freed them from its tax limitations. In fact, the Pennsylvania Commonwealth Court and Supreme Court have previously considered the appellate issue that arises from the current matter.  In *Musewicz v. Cordaro*, a 2005 Commonwealth Court decision in a case which originally arose in Lackawanna County, and *In re Voter Referendum Petition*, which came before the Supreme Court in 2009, the Courts advised that the provisions of the Home Rule Law freed municipalities, including Scranton, from the tax limitations contained in Act 511.

                As a result of the above, Scranton officials and taxpayers may be confident that current decision will be overturned on appeal.  However, though the ultimate outcome may look favorable, the effect of the Court’s opinion and the uncertainty which will exist throughout a prolonged appellate process present an equally significant issue.  Outside investors and potential home buyers are now faced with the possibility that the City may face an economic catastrophe in the coming years, which will undoubtedly result in a depreciation in real estate values, higher interest rates in the context of municipal financing, and greater difficulty for the incoming administration to attract much needed industry and economic investment in the City of Scranton.  As a result, the City cannot afford to wait two or three years while this matter works its way through the appellate process.

Fortunately, in Pennsylvania law, there exists a very unique procedure, known as King’s Bench, which allows litigants to seek an immediate review by the Supreme Court in cases involving significant public interest. This is such a case, and City officials would be wise to seek that expedited review of this decision.

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