

**Amendments to the Municipality Authorities Act Spark Controversy over Authority Board Membership**  
by  
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April 2001

On December 20, 2000, Governor Ridge signed Senate Bill 712, which amended the Pennsylvania Municipality Authorities Act (the "Act"). It became law on February 18, 2001.

While there were several sections of the Act that were amended, the amendment that has generated the most controversy was a last-second change to Section 7 of the Act. After the Bill unanimously passed the Senate, a provision was added amending Section 7A(b) of the Act. The amendment relates to individuals who are qualified to serve as members of the Board of an authority, and provides as follows:

Except as herein provided for transit authorities created for the purpose of eliminating grade crossings the members of this board, each of whom shall be a resident of the municipality by which he is appointed, shall be appointed, their terms fixed and staggered, and vacancies filled, and where two or more municipalities are members of the Authority, shall be apportioned in such manner as the articles of incorporation, the amendments thereof or the application for membership required by section three point one of this act.  
53 P.S. §7A(b)(emphasis added).

The Act previously provided that each member of the Board "shall be a taxpayer in, maintain a business in, or be a citizen of the municipality by which he was appointed or be a taxpayer in, maintain a business in, or be a citizen of the municipality into which one or more of the projects of the authority extends or is to extend or to which one or more said projects has been or is to be leased." As amended, the Act requires that each Board member be a "resident" of the municipality by which he is appointed.

Obviously, this amendment creates a substantial concern for some authorities. It would effect both authorities who have board members who are not residents of the municipality, but rather operate a business or pay taxes in the municipality, and would equally effect those authorities that have appointed members from within the service area, but outside the incorporating municipality.

Undoubtedly, the amendments will prevent the future appointment of individuals who are not residents of the incorporating municipality and will preclude the reappointment of individuals currently serving who are not residents of the incorporating municipality. However, the more difficult issue is whether those individuals currently serving as members of authority boards may continue to do so if they are not residents of the incorporating municipality. There have been no cases addressing the issue and lawyers throughout the Commonwealth have differing opinions as to the effect: some lawyers believe that a board member properly appointed at the time of his appointment cannot be disqualified simply by amendment of the Act, while others believe that the Act speaks in terms of current qualifications, such that any time a board member no longer meets the requirements of membership, he or she is no longer qualified to serve.

If an authority and its incorporating municipality are affected by the amendment, there are several options. Obviously, as the terms of current members expire, the municipality will be prohibited from reappointing that member unless he or she is a resident of the incorporating municipality. In addition, no new member may be appointed unless such person is a resident of the incorporating municipality.

With respect to current members who are not residents of the incorporating municipality, the municipality is faced with a troubling dilemma: treat such person as being disqualified from membership on the board of the authority (thereby risking a lawsuit from such person) or permit such person to complete his or her term (risking lawsuit by unhappy residents who claim that non-resident is disqualified, cannot be a member of the board, and his or her vote cannot be considered). This would be of particular concern if, for example, the non-resident member's vote was the deciding vote in favor of or against a project. If, subsequently, a court determined that such person was not qualified to serve, and that his or her vote could not be considered, serious concerns about any project where the non-resident's vote could have altered the outcome would be raised.

One alternative is for an authority that provides service outside its incorporating municipality and has members from the service area who are not residents of the incorporating municipality, to become a true "joint authority", whereby all municipalities serviced by the authority would be incorporators of the authority. The Act provides a procedure for a transformation of an authority to a joint authority. However, the process is complex and requires careful consideration of a variety of issues. Moreover, in many circumstances, conversion to a joint authority is neither possible nor the best alternative. Thus, municipalities and their authorities are left with a Hobson's Choice with respect to current members of an authority who are not residents of the incorporating municipality. Until such time as a court clarifies the amendment to the Act, or the legislature revisits the issue, municipalities faced with this issue should consult legal counsel to ascertain the most appropriate manner in which to proceed, given their facts and circumstances.

For more information on the issues raised herein, or strategies for municipalities or authorities affected by the amendments to the Act, please contact [Robert J. Tribeck](mailto:rtribeck@rhoads-sinon.com) at 717.233.5731 or via e-mail at [rtribeck@rhoads-sinon.com](mailto:rtribeck@rhoads-sinon.com).

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