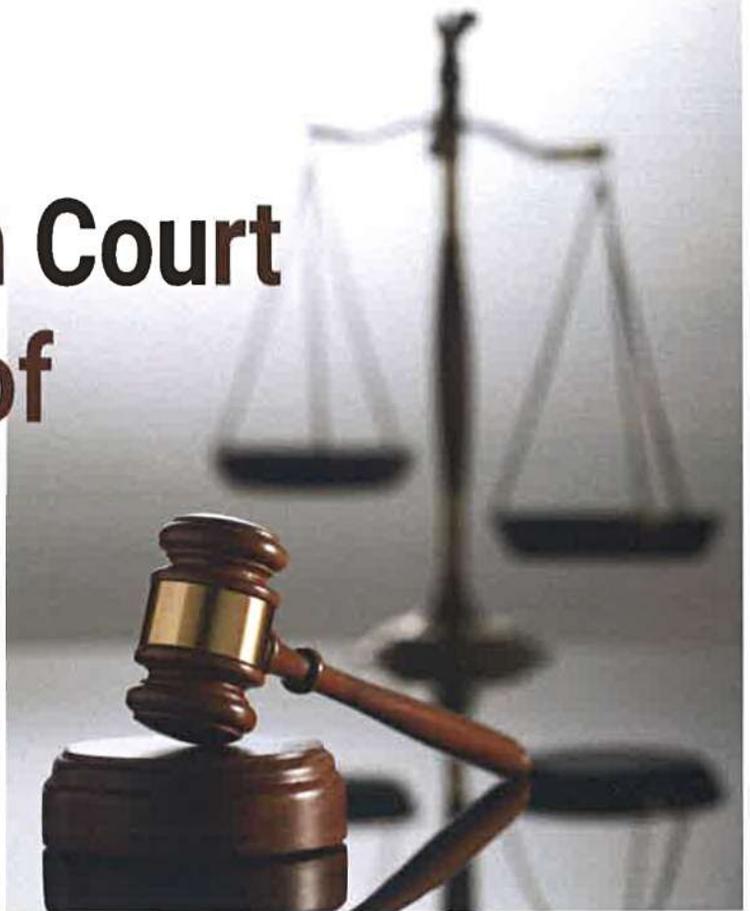


LEGAL NOTES

Pennsylvania Commonwealth Court Rules in Favor of Home Rule and Act 47 Taxation Authority



BY WILLIAM W. WARREN, JR., ESQ.*

The Commonwealth Court, on October 26, 2020, resolved an issue that threatened over a dozen Pennsylvania municipalities with financial disaster, reversing a decision in the Lackawanna County Court of Common Pleas. See *St. Fleur v. City of Scranton*, No. 112 C.D. 2020 (Oct. 26, 2020) (en banc). On November 26, 2020, the deadline for the filing of a petition for allowance of appeal (allocator) passed, and the Commonwealth Court's decision is final. The request that the Commonwealth Court decision be published was

not granted. In any event, the Commonwealth Court's decision can be cited as persuasive authority.

The Lackawanna County Court of Common Pleas, in an action brought by certain city taxpayers, had held that the City of Scranton, which is both a Home Rule and Act 47 municipality, was limited by the Act 511 cap on total Act 511 taxation, i.e. specifically that the City could not collect more than 12 mils (0.012) of Act 511 tax, calculated using the total

assessed value of real estate in the municipality. The amount of tax assessed and collected by the City for each of the four years in question totaled between \$34 and \$38 million, and the taxpayers argued that the City was limited to about \$27 million per year. For the four years at issue, the loss would be approximately \$10 million per year. The Lackawanna Court ordered the City to escrow about \$50 million to cover the supposedly unauthorized taxes collected.

On appeal to the Commonwealth Court, the City agreed that the **subjects** of taxation were those set forth in Act 511, but contended that the **rates** of taxation and the total amount of the tax collected were not limited by Act 511 because of provisions found in the Home Rule Law and, in the alternative, Act 47.

The Pennsylvania Municipal League submitted a brief as friend of the court (amicus curiae), that supported the City's position and described the devastating financial impact the Lackawanna Court's decision would have, if upheld, on additional municipalities that either are in Act 47 recovery or have adopted Home Rule. The municipalities potentially affected were as diverse as Pittsburgh and Easton City. Indeed, the ability to set rates of Act 511 taxes above the Act 511 limit is one of the reasons

that could support future decisions of municipalities to become Home Rule or to enter into Act 47 recovery.

The Commonwealth Court agreed with the position of the City of Scranton and the Pennsylvania Municipal League and reversed the Lackawanna Court, holding that the Act 511 limit on the rates of taxation does not apply to Home Rule municipalities. In further discussion, the Court observed that Scranton also argued in the alternative that Act 47 provided an exemption from the Act 511 limit. The Court concluded that making a decision on this alternate ground was unnecessary, and noted that in any event, Act 47 itself provides for relaxation of limits on taxation, albeit with court approval. The Commonwealth Court's decision was unanimous

and provides a solid legal basis for protecting the ability of Home Rule municipalities, and we suggest Act 47 municipalities as well, to set rates of taxation above the rates in Act 511.

**Mr. Warren is a Senior Partner at Saul Ewing Arnstein & Lehr LLP, participated with his colleague Matthew M. Haar, Esq. in the preparation of PML's amicus brief, and can be reached at william.warren@saul.com □*



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