

GARY ST. FLEUR, et al.

PLAINTIFFS

v.

THE CITY OF SCRANTON, et al.

DEFENDANTS

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY

CIVIL DIVISION

2017-CV-1403

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO AMEND THE AUGUST 3, 2017 ORDER OVERRULING DEFENDANTS' PRELIMINARY OBJECTIONS**

Now comes, the Plaintiffs, by and through their attorney, John J. McGovern, Jr., Esquire and in response to Defendants' Motion to Amend the August 3, 2017 Order Overruling Defendants' Preliminary Objections aver as follows:

1. Admitted to the extent that the corresponding paragraph sets forth the statutory language.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
7. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, to counsel's knowledge, the City of Scranton is the only municipality in the state in violation of the Act 511 statutory cap.

MAJURI B. KELLY  
 LACKAWANNA COUNTY  
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8. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
9. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, there has been no ruling that the taxes at issue are invalid.
10. Admitted.
11. Admitted.
12. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the Order addresses multiple issues.
13. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
14. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded. By way of further answer, Act 111 cited by Defendants states it “shall be applicable to every political subdivision in the Commonwealth.” However, the proper test in examining Act 511 is whether it is applicable to every part of the Commonwealth. The same test – applicable to every part of the Commonwealth - is also used by the Home Rule Charter and Optional Plans Law. See, 53 Pa.C.S. § 2962(e).
15. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.

16. Admitted.
17. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
18. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
19. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
20. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the proper test is whether Act 511 is applicable to every part of the Commonwealth - not every political subdivision.
21. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
22. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
23. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
24. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.

25. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
26. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
27. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the proper test is whether Act 511 is applicable to every part of the Commonwealth - not every political subdivision.
28. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
29. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the Order addresses multiple issues.
30. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.

31. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
32. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
33. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
34. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, this allegation is pure speculation.
35. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
36. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, no mandamus has been issued by this Honorable Court, no escrow has been created, and the City continues to illegally tax both residents and non-residents. The matter at issue in this litigation has not been resolved. The relief sought by the Defendants is merely a delay tactic.

37. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendants' Motion to Amend the August 3, 2017 Order Overruling Defendants' Preliminary Objections. Plaintiffs further request that this Honorable Court reject Defendants' request for a stay of the proceedings.

#### NEW MATTER

38. The previous paragraphs are incorporated herein by reference as if fully set forth at length.

39. The relief sought by the Defendants is purely a delay tactic.

40. This Honorable Court has not issued the mandamus, therefore, the matter has not been fully litigated.

41. The City of Scranton is near or over the statutory cap set forth in Act 511. Any further delay allows the City to continue to collect and spend illegally collected taxes. This would leave the Plaintiffs, and taxpayers at large, in a similar situation- their only relief would be to individually file refunds for taxes paid in excess of the statutory cap.

42. If the City is able to push this litigation to January 1, 2018 without a mandamus being issued, the clock would re-start on their illegal tax collection.

43. It is well settled that taxing statutes are strictly construed; in cases of doubt the construction should be against the government. Borough of Brookhaven v. Century 21, 425 A.2d 466 (Pa. Commw. Ct. 1979) (citing Fischer v. Pittsburgh, 178 Pa. Superior Ct. 16, 112 A.2d 814, *aff'd*, 383 Pa. 138, 118 A.2d 157 (1955)).

44. Any attempt by the Defendants to expand the lack of a rate limitation under the Home Rule Charter Law to a lack of any overall revenue cap would not be a strict reading of the Act; and any ambiguity on the matter must be construed against the City.

45. Here, such an ambiguity would exist because the Home Rule Charter Law does not specifically state that Home Rule Charter Municipalities are exempt from the Act 511 statutory cap.

46. Under the Home Rule Charter Law, the City can impose rates in excess of the Section 6924.311 rate caps, but the City cannot be free from the overall statutory cap in Act 511.

47. According to the Pennsylvania State Tax Equalization Board, the 2016 total market valuation of all property in the City was \$2,304,080,217.

48. 12 mills multiplied by the City's total market valuation of \$2,304,080,217 is approximately \$27,648,962.

49. Pursuant to the City's 2017 operating budget, the City will collect \$38,045,091 in Act 511 taxes.


50. The City is \$10,396,129 over the Act 511 aggregate statutory cap.

51. Under Pa.R.C.P. Rule 1098, at any time after the filing of the complaint, the court may enter judgment if the right of the plaintiff thereto is clear.

52. Based on the Defendants' violation of the Act 511 statutory cap, Plaintiffs seek either a) an expedited hearing on the mandamus; or b) issuance of the mandamus pending the final resolution of the case.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court either a) schedule an expedited hearing on the mandamus; or b) issue the mandamus pending final resolution of the case.

Respectfully Submitted:



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John J. McGovern, Jr., Esquire  
321 Spruce Street  
Suite 201  
Scranton, PA 18503



**CERTIFICATE OF SERVICE**

I, John J. McGovern, Jr., Esquire, hereby certify that on September 6, 2017, a copy of the foregoing was served:

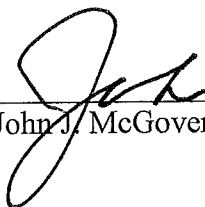
Via hand delivery on the following:

The Honorable James A. Gibbons  
200 North Washington Avenue  
Scranton, PA 18503

Via First Class Mail, postage prepaid (email), on the following:

Kevin M. Conaboy, Esquire  
1006 Pittston Avenue  
Scranton, PA 18505

MAURI B. KELLY  
LACKAWANNA COUNTY  
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John J. McGovern, Jr., Esquire