

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 FOR RECONSIDERATION

Now comes, the Plaintiffs, by and through their attorney, John J. McGovern, Jr., Esquire and in response to Defendants' Motion for Reconsideration aver as follows:

1. Admitted. By way of further answer, Plaintiffs' allege that Defendants are collecting taxes in excess of the aggregate statutory cap set by 53 P.S. § 6924.320(a) of Act 511.
2. Admitted in part; denied in part. It is admitted that the statutory language of 53 P.S. § 6924.320 is properly set forth. However, it is specifically denied that Plaintiffs contend the Defendants must limit its tax rates. By way of further answer, 53 P.S. § 6924.320 contains an aggregate statutory cap on Act 511 taxes collected. Plaintiffs contend the Defendants are in violation of the statutory cap.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

MAURI B. KELLY
LACKAWANNA COUNTY
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10. 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.
11. Admitted to the extent that the corresponding paragraph sets forth the statutory language.
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.
13. 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.
14. Admitted.
15. 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.
16. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded.
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 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.

20. Admitted to the extent that the corresponding paragraph sets forth the statutory language.

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. By way of further answer, “[i]n enacting a statute, the legislature is presumed to have been familiar with the law, as it then existed and the judicial decisions construing itBy failing to articulate any changes, the legislature implicitly acknowledged that the existing standards remain applicable.” Berks County Tax Collection Comm. v. Pa. Dep’t of Cmty. & Econ. Dev., 60 A.3d 589, 593 (Pa. Cmwlth. 2013). Further, 53 P.S. § 6924.317 clearly accounts for all Acts and Ordinances (including the Sterling Act) passed or adopted prior to Act 511 and acknowledges the interplay between them and Act 511.

Thus, Act 511 is applicable in every part of the Commonwealth.

23. 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. “In enacting a statute, the legislature is presumed to have been familiar with the law, as it then existed and the judicial decisions construing itBy failing to articulate any changes, the legislature implicitly acknowledged that the existing standards remain applicable.” Berks County Tax

Collection Comm. v. Pa. Dep't of Cmty. & Econ. Dev., 60 A.3d 589, 593 (Pa. Cmwlth. 2013). Further, 53 P.S. § 6924.317 clearly accounts for all Acts and Ordinances (including the Sterling Act) passed or adopted prior to Act 511 and acknowledges the interplay between them and Act 511. **Thus, Act 511 is applicable in every part of the Commonwealth.**

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 Home Rule Charter and Optional Plans Law only relieves a municipality's rate cap under Act 511, but not the overall statutory cap.
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. By

way of further answer, the Home Rule Charter and Optional Plans Law only relieves a municipality's rate cap under Act 511 - not the aggregate statutory cap.

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 Home Rule Charter and Optional Plans Law only relieves a municipality's rate cap under Act 511 - not the aggregate statutory cap. The Defendants are merely citing a *relief clause* in the statute and incorrectly interpreting that clause as a rate cap.

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. By way of further answer, Act 511 limits the City of Scranton's ability to collect taxes in excess of the aggregate statutory cap.

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, the above-captioned case is about a violation of a statutory cap, not the interpretation of Act 511 in every part of the Commonwealth.
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. By way of further answer, no mandamus has been issued and no escrow has been created. Therefore, no harm has occurred to the City. Rather, the City continues to collect and spend illegal taxes. Every day that goes by is also one fewer day in the statute of limitations calculation for taxpayers to request refunds of illegally collected taxes in prior years. If anything, the lack of a decision on the merits of the mandamus is a greater harm to the Plaintiffs and every other taxpayer. The public interest is greatly affected. It is estimated this case could affect in excess of 100,000 taxpayers (people and businesses/resident and non-resident) per tax year. Any further delay in this case could leave the 100,000 taxpayers with one option - to file individual claims for refunds to recover the money the City illegally collects and spends during 2017.
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 and no escrow has been created. Therefore, no harm has occurred to the City. Rather, the City continues to collect and

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WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendants' Motion for Reconsideration. Plaintiffs further request that this Honorable Court reject Defendants' request for a stay of the proceedings.

NEW MATTER

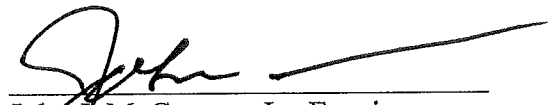
37. The previous paragraphs are incorporated herein by reference as if fully set forth at length.
38. The relief sought by the Defendants is purely a delay tactic.
39. This Honorable Court has not issued the mandamus, therefore, the matter has not been fully litigated.
40. The City of Scranton is near or over the statutory cap set forth in Act 511. Any further delay without the mandamus 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 aggregate statutory cap.

41. 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.
42. 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)).
43. 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.
44. 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 aggregate statutory cap.
45. 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.
46. According to the Pennsylvania State Tax Equalization Board, the 2016 total market valuation of all property in the City was \$2,304,080,217.
47. 12 mills multiplied by the City's total market valuation of \$2,304,080,217 is approximately \$27,648,962.
48. Pursuant to the City's 2017 operating budget, the City will collect \$38,045,091 in Act 511 taxes.
49. The City is \$10,396,129 over the Act 511 statutory cap.
50. 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.

51. Based on the Defendants' violation of the Act 511 aggregate 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 the final resolution of the case.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "John J. McGovern, Jr.", with a long horizontal flourish extending to the right.

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:

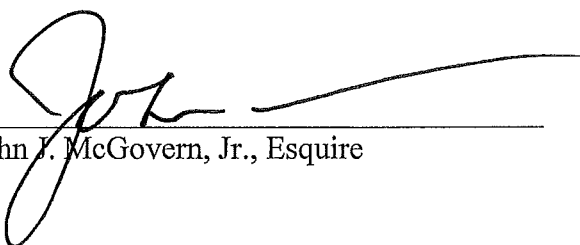
Via hand delivery on the following:

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

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

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

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LACKAWANNA COUNTY
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John J. McGovern, Jr., Esquire