Municipal Authorities
Friend or Foe?

Pennsylvania State Association of Boroughs
2013 Annual PA Municipal Legal Update

Mark S. Stewart, Esquire
Municipal Authorities: Friend of Foe?

FOE?
Municipal Authorities: Friend or Foe?

- Judge to hear council’s plea to oust borough authority chairman
- Dauphin County Authority defaults on hotel it owns in Pittsburgh
- Municipalities: Harrisburg soaked us on sewage bills
- Pennsylvania lawmakers, Harrisburg officials debate bankruptcy prohibition for cash-strapped cities
Authority Basics

- Governmental entities formed to finance, facilitate and/or operate projects without the use of taxpayer funds
- Independent – Commonwealth agencies
- A government business venture
Authority Basics

- Why form an authority:
  - Financial reasons
    - LGUDA limitations
    - User fees v. property taxes
    - Public v. private rates
  - Administrative reasons
    - Conducive to long-term planning
    - Independent, insulated and stable
    - Business-like operations
Authority Basics

- **Jurisdictional**
  - Promote regionalism
  - Feasibility of projects
  - Facilitate joint responsibility and control
Authority Basics

- Operating Authorities
  - Own and operate facilities
  - Authority has control and discretion
  - Liability rests with Authority
  - Greater flexibility
Authority Basics

- Financing Authorities
  - Conduit financing
  - Authority has no role in operations
  - Limited employees
  - Liability remains with municipality or project owner
## Authority Basics

### Common Municipality Authorities:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General/Multipurpose</td>
<td>Transit</td>
</tr>
<tr>
<td>Water</td>
<td>Airport</td>
</tr>
<tr>
<td>Sewer</td>
<td>Recreation</td>
</tr>
<tr>
<td>Solid Waste</td>
<td>Business Improvement District</td>
</tr>
</tbody>
</table>

#### Special Purpose Authorities

- Industrial and Commercial Development
- Parking
Common Elements of a Project

- Proprietary function of government
- Advances public interest
- Self-sustaining
## Authority Projects

**Typical Authority Projects Include:**

<table>
<thead>
<tr>
<th>Leasing equipment to local governments</th>
<th>Public buildings; parts of these buildings may be leased to private interests to generate revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public market houses and marketing facilities</td>
<td>Transportation terminals</td>
</tr>
<tr>
<td>Parking facilities</td>
<td>Airports and all necessary airport facilities</td>
</tr>
<tr>
<td>Parks and recreation facilities, including swimming pools, playgrounds, lakes and low head dams</td>
<td>Sewers collection systems and treatment plants, including facilities for treating industrial wastes</td>
</tr>
<tr>
<td>Solid waste disposal facilities including incinerators, landfills or other means</td>
<td>Waterworks, water supply works and water distribution systems</td>
</tr>
<tr>
<td>Hospitals and health centers</td>
<td>Mass transit</td>
</tr>
<tr>
<td>Business improvements and administrative services for commercial districts</td>
<td></td>
</tr>
</tbody>
</table>

11

---

**Authority Projects**

**Typical Authority Projects Include:**

- Leasing equipment to local governments
- Public buildings; parts of these buildings may be leased to private interests to generate revenue
- Public market houses and marketing facilities
- Transportation terminals
- Parking facilities
- Airports and all necessary airport facilities
- Parks and recreation facilities, including swimming pools, playgrounds, lakes and low head dams
- Sewers collection systems and treatment plants, including facilities for treating industrial wastes
- Solid waste disposal facilities including incinerators, landfills or other means
- Waterworks, water supply works and water distribution systems
- Hospitals and health centers
- Mass transit
- Business improvements and administrative services for commercial districts
Authority Projects

- Restricted projects, include supplying
  - Retail electric power
  - Natural gas
  - Telecommunications and cable services

- Retail v. Wholesale Electric Power Generation
  - Authorities can sell wholesale electric power
  - Cogeneration
  - Solar facilities and net metering
Authority Formation

- Assess need for service or project

- Assess alternatives for providing service or performing project
  - Municipality
  - Municipal authority
  - Joint/regional authority
  - Private corporation
Authority Formation

Process
- Resolution – specific or general authority?
- Public notice
- Articles of incorporation
- Naming of board of directors
- 50 year term of existence
Authority Termination

- **Termination**
  - Bonds must be paid/assumed
  - Approval of municipality required
  - Property assets and liabilities pass to incorporating municipalities

- **Withdrawal from Joint Authority**
  - Consent of authority board required
  - Approval of Secretary of Commonwealth required
  - No withdrawal once the authority has incurred an obligation
Authority Termination

- Assumption of Projects
  - Municipality can unilaterally take over an authority project or projects
  - Must assume or defease debt
  - Municipality can tap authority funds to pay obligations
  - Consensual transfer of projects permitted to entities other than incorporating municipality
Municipal – Authority Relations

- Common goal and agenda of public service
- Open communication is key to staying on right track
- Willing cooperation – each entity needs the other to achieve goals
Municipal – Authority Relations

- Authorities are independent, Commonwealth agencies

- Municipalities do have tools for guiding relations
  - Formation restrictions on types of projects
  - Appointment power (including ability to appoint municipal elected officials)
Municipal – Authority Relations

- Removal of members for cause (including missed meetings) or at will (for certain types of authorities)
- Bully pulpit
- Staff authority with municipal employees
- Legal action (e.g., rate challenges, competing or duplicative services)
Municipal – Authority Relations

- Contractual approval rights
- Withhold financial guarantees
- Withhold approval of assessment
- Hostile takeover of projects
- Termination of authority
Authorities – Service Area Restrictions

- Operating authorities
  - Not public utilities under Public Utility Code
  - Not subject to PUC jurisdiction
  - Not restricted by municipal boundaries or service area

Authorities – Service Area Restrictions

- Financing authorities
  - Lease facilities back to municipality for operations
  - Courts view as being tantamount to a municipally-owned system
  - Extra-territorial service triggers PUC jurisdiction

Authorities – Service Area Restrictions

- Hybrid approach whereby municipality operates system but authority sets rates and controls interconnection
  - Authority control determinative
  - Not subject to PUC jurisdiction
  - Not restricted by municipal boundaries or service area

Municipality Authorities Act prohibits authorities from:

- Constructing, financing operating or maintaining projects
- that, in whole or in part,
- duplicate or compete with existing private or public enterprises
- serving substantially the same purposes
Authorities – Competition Restrictions

- Pennsylvania courts have consistently applied prohibition only in present tense
  - Must be a presently existing entity
  - Presently serving the same purposes
  - What competing entity “could possibly do” in future is insufficient to trigger prohibition

- Key issue for water & sewer authorities with potential to serve new or expanded development
Presumed advantages of public ownership and operation of systems has come under increasing scrutiny

- Authorities traditionally have had access to tax exempt/less expensive credit
- Authorities can theoretically keep rates/user fees lower because there is no need to provide a return to investors
However, increasing costs of public employees, inefficiencies in operations and the need to/cost of reinvesting in infrastructure are challenges to authorities.

Challenges have led to enhanced focus on whether services provided are a core function of government.
Authorities – Privatization

Historical forays into privatization by authorities have included:

- Partial privatization by outsourcing specific functions
- Outsourcing of management of entire system
- Sale of systems
Public Private Partnerships (P3s) are a new trend
- Authority continues to own system, set policy and oversee/enforce operating standards
- Monetization of revenue stream for benefit of authority and municipality
- Transfer capital expense obligations and operating risk to private partners
P3s engage unique strengths of both public and private partners to achieve projects and optimize public funds and services

- Improve service delivery and cost effectiveness
- Increase investment in public infrastructure
- Reduce public sector risk
- Maximize use of assets
Authorities – Privatization

- Flexible transaction structures
  - Long-term lease
  - DBFOM
  - Upfront payments v. shared cash flows
  - Municipal/authority co-invest option
Authorities – Privatization

- Authorities are increasingly participating in P3s as quasi-“private” partner
  - Lehigh County Authority wins bid for Allentown water system
  - Port of Greater Cincinnati Development Authority bid on city parking assets and then joined winning consortium
  - Authorities as government business ventures
Conclusion

- Authorities serve important and useful functions in providing public services
- The 3 Cs of authority-municipal relations
  - Common goals
  - Communication
  - Cooperation
- P3s may provide opportunities to maximize efficiency and financial benefits from authority assets for the public
THANK YOU – QUESTIONS?

FRIENDS