

## Now What? The Impact of the Pennsylvania Supreme Court's Decision in *West Chester Borough v. Pennsylvania State System of Higher Education and West Chester University of Pennsylvania* On Municipal Governments and Municipal Authorities

By Brett C. Flower

In a case of first importance for all municipalities and municipal authorities, the Pennsylvania Supreme Court decided on April 30th that the stormwater fee imposed by the Borough of West Chester ("Borough") on improved properties in the Borough for the "use of, benefit by and the services rendered by the stormwater management system, including its operation, maintenance, repair, replacement and improvement of said system and all other expenses" is not a fee, but a tax.

The Court addressed the issue of whether the Borough could charge a stormwater fee calculated based upon the amount of impervious surface on a parcel owned by the Pennsylvania State System of Higher Education and West Chester University of Pennsylvania (collectively the "University"). As an instrumentality of the Commonwealth, the University is immune from taxation, but municipalities such as the Borough may charge the University fees for services rendered, such as for water and wastewater services. The Court determined that the stormwater fee imposed by the Borough is a tax to which the University is not subject, due to its immunity from taxation.

The Court applied a two-part test in determining whether the stormwater charge imposed by the Borough was a fee or a tax. First, the Court asked whether the Borough was performing the service in a quasiprivate or public capacity. A municipality conferring a general benefit for the public good is acting within its public capacity, thereby rendering any charge for the service provided a tax. Conversely, a discretionary service provided pursuant to a contractual relationship that conveys a specific benefit is provided within a municipality's quasiprivate capacity and may not, under certain circumstances, constitute a tax.

Under this test, only if the municipality is acting in a quasiprivate capacity must a court consider whether the charge is reasonably related to the value of the service rendered. Here, the Court never reached the second step of the test as it found that the Borough was acting within its public capacity, dispositively rendering the fee a tax as to the University.

The Court explained that the Borough imposed the fee for the purpose of promoting "the public health, safety, and general welfare" of all Borough residents. Where a municipality is duty bound to provide a service for the public benefit (and in the absence of a voluntary, contractual relationship between itself and those receiving the service), the associated charge is compulsory and, therefore, constitutes a tax.

Generally, the stormwater fee was determined to be a tax for the following reasons: (1) the Borough's stormwater management service program arose from its non-delegable duty to manage stormwater runoff; (2) the service is intended to benefit the general public; and (3) there is no explicit or implied contract between the Borough and the University for this service.

The Borough is a home rule municipality that adopted its stormwater fee directly through an ordinance. The Court did not address the implications for all other versions of stormwater fees across the Commonwealth, such

as those imposed by municipal authorities pursuant to express statutory authorization contained in the Municipality Authorities Act. Also, the present case resolved only the question of whether tax immune bodies, e.g., the Commonwealth and its political subdivisions, are subject to general stormwater fees imposed based upon areas of impervious surface on improved parcels.

The Court also did not address whether a refund of previously collected fees must be remitted, either to tax immune or private owners of property.

Eckert Seamans continues to review the implications of the Court's decision and the evolution of how authorities and municipalities can now legally fund the federally and state-imposed burdens necessary to address, manage, and improve stormwater in the Commonwealth. The unresolved questions posed by the impact of *West Chester* suggest that all municipal authorities and municipalities should decline to make immediate or definitive decisions regarding *West Chester* until a clearer picture emerges from its application.

# # #

Eckert Seamans' Municipal Law and Governance and Municipal Finance practices will continue to follow *West Chester* and provide updates as to its implementation and best practices for addressing its impact. Eckert Seamans serves as solicitor and special counsel at all levels of government at the Commonwealth, county, city, borough, township and authority level and its members are involved on a daily basis with the issues that move government forward.



This Municipal Law & Governance Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact [Brett Flower](mailto:bflower1@eckertseamans.com) at 717.237.6072 or [bflower1@eckertseamans.com](mailto:bflower1@eckertseamans.com), or any other attorney at Eckert Seamans with whom you have been working.