

Primer

House Appropriations Committee (D)

JOE MARKOSEK, DEMOCRATIC CHAIRMAN

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The Fiscal Code

Each year since 2006, during “budget season” - which is the time period between when the governor introduces the budget and the budget passes - the General Assembly has passed a bill amending the Fiscal Code (Act of April 9, 1929, P.L. 343, No. 176). The bill, commonly called the “trailer” bill, follows the budget bill and provides substantive language implementing that budget. The legislature needs to amend the Fiscal Code annually because of a decision by the Supreme Court of Pennsylvania - Hospital & Healthsystem Association of PA (HAP) v. Department of Public Welfare, 888 A2d. 601 (2005).

Since the Supreme Court of PA decided the HAP case, each year, the General Assembly has been careful to put substantive language into the “trailer” bill amending the Fiscal Code, rather than into the annual General Appropriation Act. Consequently, the Fiscal Code “trailer” bill has at times become a repository of a myriad of unrelated subjects.

Supreme Court Decision - HAP (2003)

The Hospital and Healthsystem Association of PA (HAP) v. Department of Public Welfare case arose when HAP challenged the constitutionality of certain language in the General Appropriation Act of 2002. HAP asserted that the language was substantive language violating Article III, Section 11 of the Pennsylvania Constitution, which pertinently provides: *“The general appropriation bill shall embrace nothing but appropriations for the executive, legislative and judicial departments of the Commonwealth, for the public debt and for public schools.”*

The challenged language implemented an appropriation to the Department of Public Welfare by limiting how a Medicaid managed care organization could reimburse out-of-network providers for certain medical services.

To analyze whether the language violated Article III, Section 11 of the constitution, the Supreme Court adopted a three-part test that had been used previously by the Commonwealth Court of PA in *Biles v. DPW*, 403 A.2d 1341 (1979).

For language to be constitutional under the Biles test, the language must:

- Be germane to the appropriation;

- Not conflict with existing law; and
- Not extend beyond the life of the applicable general appropriation act.

In the HAP case, the Supreme Court decided that the challenged language conflicted with existing law and therefore, was unconstitutional.

As part of its general analysis in the HAP case, the Supreme Court examined two sections of Article III of the constitution:

- The first was Section 11, described above, limiting the general appropriation bill to appropriations for the executive branch, the legislative branch, the judicial branch, public debt and the public schools.
- The second was Section 3, which provides: *“No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.”*

The court indicated that these two sections were intended to stop the practices of “logrolling” and “riders.” Logrolling involves putting numerous subjects, that are not necessarily related, together into one omnibus bill. Riders involve putting a provision into the budget bill that is not related to the budget, *“thus coercing the executive to approve*

obnoxious legislation, or bring the wheels of the government to a stop for want of funds.” (HAP, p. 608). According to the Supreme Court, these two sections of the constitution produce a tension that prevents abuses.

Thus, the court found that the general appropriations act provision in question constituted invalid substantive language in violation of Article III, Section 11. While the legislature had the authority to alter the substantive language, the proper way to do so would have been through a separate enactment for the legislature’s full and focused consideration pursuant to the requirements of the constitution.

Commonwealth Court Decision - Uniontown Hospital (2006)

After the Supreme Court decided the HAP case, the Commonwealth Court of PA decided *Uniontown Hospital v. Department of Health*, 905 A.2d. 560 (2006). The dispute in Uniontown involved language in the General Appropriation Act of 2005 that directed the use of some of the money appropriated to the Department of Health for quality assurance. The Uniontown Hospital wanted the court to enforce the limiting language of the appropriation, but the department alleged that the language violated Article III, Section 11 of the constitution.

The court’s analysis turned on the first part of the Biles test, whether the substantive language was germane to the appropriation. According to the court, substantive language is germane to an appropriation if it is incidental to the appropriation, shaping or defining the appropriation in some way. Language that micro-manages a department “*by dictating substantive procedures [that it] must follow in spending [its] general operating funds*” is not germane. The court opined further, that language specifically allocating money to a special project, rather than securing the performance of a department’s regular, ordinary work, is not germane and therefore, violates the constitution.

Commonwealth Court Cases (1991)

Prior to the HAP and Uniontown cases, there were two cases, in 1991, where the Commonwealth Court voided substantive language in a general appropriation act. The cases involved language in the General Appropriation Act of 1987 that established the effective date for a change in a nursing home reimbursement rate. According to the court, the General Assembly delegated the authority to set nursing home reimbursement rates to the Department of Public Welfare in the Public Welfare Code. The court determined that the language in the general appropriation act was actually an attempt to amend the Public Welfare Code and was substantive. Therefore, pursuant to Article III, Section 11, the court voided the language. [*Wesbury United Methodist Community v. Department of Public Welfare*, 597 A.2d 271 (1991) and *Cedarbrook Nursing Homes v. DPW*, 622 A.2d 401 (1991).]

Supreme Court Decision - Sears v. Wolf (2015)

In *Sears v. Wolf*, former recipients of a low-cost health insurance program (adultBasic) petitioned for review in the nature of a class action suit against the governor, Secretary of Budget, Senate, House of Representatives and other commonwealth officials for allegedly violating the Tobacco Settlement Act (TSA) and the Pennsylvania Constitution when funds for the program were redirected through passage of two Fiscal Code bills (Act 46 of 2010 and Act 26 of 2011). The Commonwealth Court sustained in part and overruled in part petitioner’s claims; most notably, the court determined the acts violated Article III, Section 3 of the Pennsylvania Constitution known as the single subject rule.

In 2015, the Supreme Court overturned the Commonwealth Court decision. The court, in *Sears v. Wolf*, 118 A.3d 1091 (2015), determined that the former recipients of the low-cost health insurance program lacked standing to pursue the action. In the absence of a constitutionally recognized, individual interest, the legislature may sanction judicial redress or foreclose it. In terms of adultBasic, from the outset, the legislature expressed the manifest intention that subscribers should have no claim against commonwealth funds. [See 35 P.S. § 5701.1303(c).]

Commonwealth Court Decision - Scarnati v. Wolf (2015)

In *Scarnati v. Wolf* (2015), Senators challenged, as unconstitutional, former Gov. Corbett's partial disapproval of the General Appropriations Act of 2014 and 2014 Fiscal Code Amendments (FCA).

The Commonwealth Court most notably held that the governor had the authority to disapprove of items of appropriation in the FCA. The court concluded that the FCA constitutes a "bill making appropriations of money, embracing distinct items," for purposes of Article IV, Section 16, which gives the governor power to disapprove of any item or items of any bill, making appropriations of money.

In reaching its conclusion, the court defined an "appropriation" as a sum of money that the legislature designates for a particular public purpose. The fact that the FCA serves to further define the legislature's prior allocation of funds does not preclude the allocation from constituting an "appropriation," or the FCA from constituting a "bill making appropriations of money."

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