

Y Martin

**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL**

April 2, 2001

**SUBJECT:** Board of Claims Regulation #105-4

**TO:** Louis R. Martin  
Chief Counsel  
Board of Claims

**FROM:** David J. DeVries  
Chief Deputy Attorney General  
Review and Advice Section

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01 APR -5 PM 1:06  
BOARD OF CLAIMS

Our review of the above regulation has raised the following comments and questions.

Which provisions of the Procurement Code affect Rule 201(d)?

This memo will serve to toll the thirty-day statutory review period. Upon receipt of the clarification requested here, we will resume our review of the regulation.

DJD:mlm  
CRA010170

Original: 2180



Board Members  
David C. Clipper, Esquire  
Chairman/Chief Administrative Judge

James W. Harris  
Vice-Chairman/Citizen Member

Louis G. O'Brien, P. E.  
Secretary/Engineer Member

Commonwealth of Pennsylvania  
BOARD OF CLAIMS  
200 North Third Street, Suite 700  
Harrisburg, PA 17101-1518  
(717) 787-3325  
Facsimile Number (717) 787-0415  
April 11, 2001

David J. DeVries, Chief Deputy Attorney General  
Review and Advice Section  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

Re: Board of Claims' Regulation No. 105-4

Dear Mr. DeVries:

Your memorandum received on April 5, 2001 requests that the Board cite the provisions of the Procurement Code which affect Rule 201(d).

Rule 201(d) is being repealed because there are circumstances under which it could conflict with Section 1712(e) of the Procurement Code. The Board chose to repeal the Rule in order to avoid misleading counsel practicing before the Board, and to try to minimize the number of situations in which a conflict will arise.

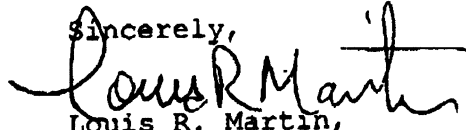
The conflict arises because Section 1712(e) purports to narrow the Board's jurisdiction by limiting the time a claim may be filed to "...within 30 days of receipt of the decision" from the contracting agency. The Board's statutory grant of jurisdiction under 72 P.S. sec. 4651-6 covers breach of contract claims filed within six months of accrual of the action. If the 30 day period under Section 1712(e) has expired but the six month statute of limitations under the Board of Claims Act has not yet expired, a conflict arises. Under such circumstances the Board of Claims intends to accept jurisdiction pursuant to the Act.

The Board also notes there are other sections of the Procurement Code which could potentially conflict with the jurisdiction and operation of the Board, including Sections 1712 (a) and (f), 1725 (b) and (c), 1726 and 1751. If conflicts arise, they will have to be resolved by an appellate court. Meanwhile, the Board now attempts to avoid at least one of these conflicts.

David J. DeVries, Chief Deputy Attorney General  
April 11, 2001  
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Please note that on March 16, 2001 the regulation which amends the Board's Rules of Procedure was submitted to Chuck Anderson of your staff for review. He spoke to Board Counsel, Sally Treweek, on that date and indicated his approval.

I hope that this letter clarifies the Board's position. If you need anything further for your review of the regulation, please call me.

Sincerely,  
  
Louis R. Martin,  
Chief Counsel

cc: Michael Stevens, Regulatory Analyst (IRRC)  
Chris Markham, Regulatory Analyst (IRRC)



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## FACSIMILE COVER SHEET

TO: Mike Sterens  
Chris Markham FROM: Louis Martin  
DATE: April 10, 2001 TIME: \_\_\_\_\_  
RE: Regulation # 105-4 (Board of Claims)

FACSIMILE OPERATOR'S INITIALS: lyw

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 3

MESSAGE:

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