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2005 MAY 16 AM 10:30

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

May 12, 2005

Ms. Mary S. Wyatte
Acting Executive Director
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Dear Ms. Wyatte:

On Tuesday, April 26th, your office contacted us concerning a proposed regulation no. 18-401 (no. 2474) entitled "Administrative Practice and Procedure" pertaining to the Department of Transportation. This regulation was published in the April 16, 2005 edition of the *Pennsylvania Bulletin*. We would like to thank you for contacting us and providing us with this information.

After reviewing the proposal we have surmised that its effects are primarily of an internal nature to the operations of PennDOT and will have little effect on Pennsylvania's municipalities.

Again, we would like to thank you for your courtesy regarding this issue.

Sincerely,

Elam M. Herr
Assistant Executive Director

EMH:mar

DIANGELUS AND LIST

ATTORNEYS AT LAW

(NOT A PARTNERSHIP)

14 WEST FRONT STREET

MEDIA, PENNSYLVANIA 19063

Original: 2474

LAWRENCE J. DIANGELUS
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(610) 565-5900
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April 22, 2005

Jason Wagner, Esquire
House Transportation Committee
House Box 202217
Harrisburg, PA 17120-2217

VIA FAX ONLY

RE: Proposed Rule Making

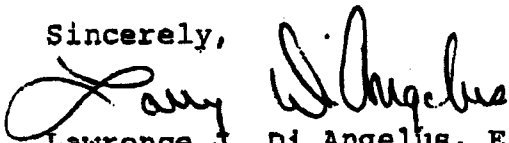
Dear Jason:

I am writing on behalf of P.A.D.L.A. members regarding a proposed rule involving administrative practice and procedures recently published in the Pennsylvania Bulletin. We oppose this proposed rule because it flies directly into the face of two long standing decisions of the Supreme Court of Pennsylvania regarding the exact issue addressed by this proposed rule. I cite you both Dussia v. Barger, 351 A2nd 667 (1975) and Lyness v. Board of Medicine, 605 A2nd 1204 (1991).

In addition to the separation of functions issue addressed above we also object to this proposed rule because of our belief that this rule will eventually lead to the removal of factual review of each situation presented by petitioners to either a hearing officer or an administrative law judge. A vital element of due process will be ignored if we eliminate the presence of an impartial review by an impartial third party.

The exact nature of our objections cannot be fully expressed in a letter and we would appreciate the opportunity to present our positions in person, if possible. Thank you for your understanding in this matter.

Sincerely,



Lawrence J. Di Angelus, Esquire

cc: David Thomas, Esquire
Bob Mustin, Esquire

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RELATIVE COMMISSION

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LAW OFFICES

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April 21, 2005

Andrew H. Cline, Esq.
Deputy Chief Counsel
Office of Chief Counsel - 9th Floor
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dear Mr. Cline:

This correspondence is in response to a proposed rule making involving administrative practice and procedures published in the *Pennsylvania Bulletin* in Volume 35, No. 16, April 16, 2005, pp. 2309-2310.

I am writing to express my strong opposition to the proposed changes. It is absolutely imperative that there be a strict separation of the adjudicatory function from those representing the Department in administrative hearing matters. Removing the strict prohibition of ex parte discussions does nothing more than invite abuses and create vagueness where such vagueness should not exist. To suggest that ex parte communications between Department staff or staff counsel and adjudicatory officials "should be avoided" when such communications could create an appearance of impropriety is insufficient to protect those with cases pending in administrative hearing matters. I believe that the previous language indicating "under no circumstances may any Department attorney representing the Department in an administrative hearing matter or any Department employee involved in such a matter discuss the case ex parte with the Administrative Hearing Officer, the Chief Counsel or the Secretary" is an integral part of due process and fairness. Section 491.2b should not be adopted as proposed and subsection (c)1, 2 and 3 should be deleted from any proposed change.

I believe there is no need to change Section 491.2a as it ensured due process and fairness for persons involved in the administrative hearing process.

I note that the purpose of the rule making is to "clarify the separation of the adjudicatory and adversarial functions" but I suggest that the watered down version of restrictions and due process will do nothing but confuse the matter and encourage communications when such communications should not exist.

Very truly yours,



John B. Mancke

JBM/hrc

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2005 APR 26 PM 1:43
NEW JERSEY COMMISSION

