

September 15, 2010

Northumberland County Tax Collection Committee
% Paula J. Greco, NCTCC Chairman
359 Ferster Hill Road
Sunbury PA 17801

Re: *Issue of Weighted Vote vs Per Delegate Vote on
Tax Collector Designation*

Dear Paula:

In order to address the issue raised by Brian Snyder, delegate from the Milton Area School District and other delegates objecting to the vote for the tax collector for the NCTCC on the basis of a weighted vote instead of a per delegate vote, I am providing the following analysis. I preface this analysis by repeating the statement I made at the last meeting, which was that my interpretation is certainly subject to debate, since I think there are some provisions of the bylaws that are not perfectly clear on this issue.

The starting point is based upon the provisions of Section 6924.505(c)(2) of Act 32 which states as follows:

For the first meeting of the tax collection committee, actions of the tax collection committee shall be determined by a majority vote of those delegates present. Votes shall be weighted among the governing bodies of the member political subdivisions according to the following formula: 50% shall be allocated according to the proportional population of each political subdivision in proportion to the population of each tax collection district as determined by the most recent Federal decennial census data and 50% shall be weighted in direct proportion to income tax revenues collected in each political subdivision, based on each political subdivision's most recent annual financial report submitted to the department or the Department of Education. For subsequent meetings, votes shall be taken in accordance with this paragraph unless the bylaws provide otherwise. (emphasis added)

In addition, sub-paragraph (c)(3) provides:

No later than September 1, 2009, the department shall calculate the weighted vote for each political subdivision within each tax collection district based on the formula specified in paragraph (2). By July 1 of the year following the first meeting, and of each year thereafter, each tax collection committee shall recalculate the weighted vote unless the bylaws provide for a more frequent recalculation.

The by-laws of the NCTCC were adopted April 7, 2010 upon on a motion by Jason Budman and seconded by Beth Kremer and by unanimous vote of the delegates present. It was noted in the minutes that the numeral three of the proposed by-laws pertaining to a management structure, which was not provided for under Act 32, was deleted from the draft bylaws. It is my understanding that the model by-laws used by the by-law committee were those proposed by the Pennsylvania Association of School Business Officials and not the model proposed by the Pennsylvania Department of Community and Economic Development.

From information provided to me, all votes taken by the NCTCC after the initial meeting were taken by a per delegate vote and not a weighted vote. It appears that this was also the case at the adoption of the bylaws, although the minutes are not clear on that issue. The first time that a dispute over the weighted vote versus per delegate vote arose was during the last meeting concerning the appointment of a tax collector for the NCTCC.

Concerning the weighted vote, Article I, Section 5 of the by-laws is titled, Vote Weight/Votes Required for Action on Matters Other than Major Decisions. The title to this paragraph is crucial in this analysis since it indicates that the section addresses votes required for action on matters "Other than Major Decisions". Accordingly, Section 5 states that action taken by the Board shall be by the affirmative vote of a majority of all delegate votes and in counting the votes the votes of each delegate will be weighted. However, as previously stated, this section indicates that the weighted vote applies to matters "Other than Major Decisions." Accordingly, it appears that weighted votes only apply to action on matters other than Major Decisions.

Article I, Section 7 of the bylaws addresses Major Decisions and Major Decisions include, inter alia, amendments to the bylaws, approval of the annual budget, appointment of a solicitor and other services to the NCTCC, and finally under sub-paragraph (k), appointment of a tax collector and approval or termination of a tax collector agreement with the collector.

Finally, Article I, Section 8, sub-paragraph b. Vote Required for Major Decisions, states that:

*Action taken by the Board on all other **Major Decisions** will be by the affirmative vote of a majority of all delegate votes present.*

Accordingly, since the selection of a tax collection is a major decision and therefore not covered by the weighted vote provision of Section 5, the per delegate vote would apply and not a weighted vote.

Next, reference is made to weighted vote in Article V., Rules Concerning Required Notices/Meeting Participation/Meeting Place/Manner of Voting, Section 7., Manner of Voting, which provides that:

These by-laws provide for weighted voting by Board delegates pursuant to 53 P.S. §6924.505(c)(3). Any vote by the Board shall be conducted by roll call.

While this section does indicate that weighted voting is provided for board delegates, it does not mandate that all voting must be weighted and the by-laws made provide otherwise as set forth in Section 6924.505(c)(2), previously stated.

I understand that the objectors contend that they are providing financing for the Committee based upon weighted provisions of the Act. However, the financial requirements are pursuant to Section 6924.505(1) (**Annual budget required**), sub-section (2) of the Act which states that:

The expenses of operating the tax collection district shall be shared among and paid by all political subdivisions within the tax collection district that are represented by voting delegates on the tax collection committee and shall be weighted in direct proportion to income tax revenues collected in each participating political subdivision based on the political subdivision's most recent annual audit report required under this section.

Accordingly, pursuant to this section, the contribution required from each entity is constantly weighted and is separate from the voting provisions of the Act. Therefore this weighted contribution is not subject to alteration by the bylaws as are the voting requirements.

I understand the dispute raised by the objectors, based upon the uncertainty in the bylaws on the type of vote required. However, it appears to me that there is no perfect solution to this issue, since the NCTCC is now stalemated. The potential solutions are as follows:

1. Amend the bylaws pursuant to Article IX, ByLaw Amendment of the ByLaws which states as follows:

A copy of any proposed amendment to these bylaws shall be given to all delegates at least ten (10) days prior to the Board meeting at which it will be presented for adoption. Any such proposed amendment may be adopted in the form given to the delegates or with such clarifying or other amendments as the Board determines appropriate at the meeting at which the proposed amendment is presented for adoption. If the proposed amendment sets forth a restatement of the bylaws in their entirety, there shall be no limitation on the nature or content of clarifying or other amendments that may be made before final adoption. However, if the proposed amendment relates only to one or more particular sections of the bylaws and is not presented in the form of restatements of the bylaws in their entirety, the clarifying or other amendments made before final adoption shall not materially enlarge the purpose as set forth in the copy of the proposed amendment given to delegates prior to the Board meeting. Approval of a bylaw amendment by the delegates shall require the affirmative vote of a 2/3 supermajority of all delegate votes present.

The problem with an amendment is this action constitutes a Major Decision in Article I, Section 8 and brings the NCTCC back to the question of whether major decisions are by a weighted vote or by a per delegate vote. Therefore a dispute would occur over which vote is required to amend the bylaws.

2. The dispute at this point involves only the appointment of the tax officer under Section 6924.507 of the Act, and Sub-Section (a) requires that by September 15, 2010, each tax collection committee shall appoint a tax officer by resolution and shall notify the department of the appointment. At this point the department would be notified that the appointment is in dispute based upon the issue of the weighted voting and therefore is not a final action. In such case, Section 6924.507(b) provides:

If a tax collection committee has not appointed a tax officer under subsection (a) or if a tax officer ceases to hold office and a successor has not been appointed within 30 days of the vacancy, the tax collection committee shall immediately notify the department and shall submit the names of at least two nominees for the position of tax officer to the court of common pleas in the county in which the tax collection district is located. The court shall select a tax officer from among the nominees submitted by the tax collection committee.

Accordingly, under this section of the Act, if there is no final appointment, the Court would determine the new tax collector for the NCTCC.

3. Even if the appointment of a tax collector is determined by the court, the issue of the weighted vote versus per delegate vote as it pertains to Major Decisions is not resolved. Accordingly, unless some compromise proposal is made by the delegates in favor of the weighted vote for Major Decisions that is agreeable to the delegates favoring per delegate vote, the

stalemate will continue. I would encourage those delegates to make any such proposal if they have one.

4. Ultimately, if no resolution can be reached by the committee, the Court of Common Pleas of Northumberland County would have to be petitioned to determine whether, under the bylaws, a weighted vote or a per delegate vote is required for a Major Decision. In addition, I understand from my conversation with Brian Snyder, delegate from the Milton School District, that questions have been raised about whether the procedure in the Act for adopting the by-laws was properly followed, and therefore a challenge may be made to the existing by-laws. Again, this issue would have to be determined by the Court of Common Pleas of Northumberland County. As the Solicitor for the Committee, I serve at the direction of the Chairman of the Committee, and I cannot mediate a dispute between factions of the Committee. If the faction of the delegates favoring weighted votes wishes to have a court determination of this issue, it is certainly their prerogative to request the same.

Finally, I am aware from comments by certain board delegates that if weighted votes are required on all Major Decisions, delegates from the smaller municipalities believe that they would have no reason to attend meetings because their vote would not count at all. This, of course, would pose a significant problem for future board meetings since Article 1, Section 3 of the by-laws states that: *A quorum shall consist of the presence of a majority of all primary voting delegates (or an alternate present in place of the primary voting delegate)*. Accordingly, the quorum is not based upon weighted votes of the delegates. Therefore, if a significant amount of the delegates from smaller municipalities do not attend, the Committee may not be able to have a quorum and in such event would not be able to take any official action. While the Act requires each governing body to appoint a delegate, there appears to be no penalty for a delegate not attending a meeting. As a result, the Committee could be stalemated from any action whether the ultimate determination is for a weighted vote or a per delegate vote on Major Decisions. Unfortunately, the State Legislature has enacted this Act 32 and local government officials are left to deal with it. Ultimately the court may have to interpret its provisions.

I am providing a copy of this letter to each of the delegates who have stated their objection to the tax collector vote, and it is my understanding that the letter will be placed on the website for the NCTCC for all delegates to view. It is also my understanding that the October 4th meeting of the NCTCC is being canceled since nothing could be

accomplished at that meeting. Perhaps before the November meeting, some proposals will be set forth or action will be taken to resolve this issue. I welcome any suggestions.

Sincerely,

REB:alm

ROBERT E. BENION, Solicitor
Northumberland County Tax
Collection Committee

c: Brian Snyder
Gene Welsh
Patty Troutman
Janis Venna
Stephen Curran

