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By email (benion@ptd.net) and first-class mail

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COPY

Re: Northumberland County TCC/Weighted Vote

Dear Bob:

This follows up on our phone conversation of this afternoon, concerning your opinion letter to the Northumberland County Tax Collection Committee of September 15, 2010. As discussed, we represent a number of members of the Northumberland County TCC regarding the issue addressed in your letter.

Your letter opines that the Northumberland County TCC bylaws require weighted voting by delegates on non-major decisions, and non-weighted voting by delegates on major decisions.

Your letter does not mention the PASBO bylaws form, which provided the starting point for the Northumberland County TCC bylaws. As our firm was legal counsel that worked on the PASBO bylaws form, I thought it would help to share that form with you. A copy of the PASBO bylaws form is enclosed with the email copy of this letter.

Please note in particular Article I, Section 5 of the PASBO bylaws form, which provides as follows:

**Section 5. Vote Weight/Votes Required for Action on Matters Other than Major Decisions:**

a. **General Rule on Vote Required:** Except as otherwise provided in these bylaws, all action taken by the Board shall be by the affirmative vote of a majority of all delegate votes present [, but such majority shall not constitute less than [40%] of all delegate votes that could be cast if all delegates were present].

**[Delegate Vote Option 1 – Weighted Vote:**

b. **Weighted Voting:** In counting delegate votes, the vote of each delegate will be weighted. By September 1, 2009, the Pennsylvania Department of

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**Community and Economic Development will calculate the weight of each delegate's vote pursuant to 53 P.S. § 6924.505(c)(3). Pursuant to such section, the TCC shall re-weight each taxing authority delegate's vote on July 1, 2010, on July 1 every year thereafter, and at any time when a new taxing authority is added to the TCC as set forth in Article VI. Re-weighting will be based on the following formula: (1) 50% of the weight for each delegate vote will be allocated according to the proportional population of each taxing authority in proportion to the total population of the TCD, as determined by the most recent Federal decennial census data; and (2) 50% of the weight for each delegate vote will be allocated in direct proportion to the income tax revenues collected for each taxing authority based on each taxing authority's most recent annual financial report submitted to DCED or the Pennsylvania Department of Education. As to any delegate appointed to represent more than one taxing authority, the weight of such delegate's vote will be the sum of the weight assigned for each taxing authority delegate's vote.]**

**Delegate Vote Option 2 – One Person, One Vote:**

**b. Vote Weight: In counting delegate votes, each delegate on the Board will have one equally-weighted vote.]**

In comparing the foregoing excerpt from the PASBO bylaws form to Article I, Section 5 of the bylaws adopted by the Northumberland County TCC, it is clear that your TCC opted for "Delegate Vote Option 1," providing for weighted voting by delegates, and declined to utilize "Delegate Vote Option 2," which would have provided for non-weighted voting by delegates.

That the Northumberland County TCC opted for weighted voting is further amplified in its bylaws at Article IV, Section 7, which provides as follows: "These bylaws provide for weighted voting by Board delegates pursuant to 53 P.S. § 6924.505(c)(3)." The foregoing sentence was made available for use as an option in the PASBO bylaws form, in the event a TCC chose to utilize weighted voting. By deciding to insert that optional sentence from the PASBO bylaws form into Article IV, Section 7, once again the Northumberland County TCC expressed its clear intent to utilize weighted voting.

With regard to the caption for Article I, Section 5 – which you addressed in your letter – the PASBO bylaws form reflects that subsection (a) of that Section applies to "Vote Weight," and subsection (b) of that Section applies to "Votes Required for Action on Matters Other than Major Decisions." There is no indication in the PASBO bylaws form that the Vote Weight rule in subsection (a) applies only to matters other than Major Decisions. The Northumberland County TCC decision to "merge" subsections (a) and (b) from the PASBO bylaws form into a single Section does not reflect any intention to use non-weighted voting for non-Major Decisions. Had that been intent, the TCC would have stated so in its bylaws.

Indeed, nowhere in the Northumberland County TCC bylaws is there any expression of intent to use non-weighted voting for any purpose. The provision cited in your letter – Article I, Section 8 – merely distinguishes that certain types of “Major Decisions” will require a two-thirds supermajority vote of all delegate votes present, and all other Major Decisions will require a simple majority of all delegate votes present. Article I, Section 8 nowhere indicates that in counting votes on Major Decisions, a non-weighted vote rather than a weighted vote is to be utilized.

Moreover, please keep in mind that Act 32 requires weighted voting by the TCC “unless the bylaws provide otherwise.” 53 P.S. § 6924.505(c)(2). Because the Northumberland County TCC adopted bylaws that expressly provide for weighted voting in two places and omit any reference whatsoever to non-weighted voting, under Act 32 the TCC has no lawful option but to utilize only weighted voting.

Finally, from a common sense perspective, obviously it would have been illogical for the group of majority jurisdictions in the Northumberland County TCC based upon weighted votes to approve bylaws preserving their majority weighted voting only for non-major decisions, and relinquishing their majority weighted vote for major decisions.

We trust that bringing to your attention the enclosed PASBO bylaws form helps clarify matters. Presumably, this new information will allow you to readdress this issue, and conclude that the Northumberland County TCC must use weighted voting in all instances, unless its bylaws are amended to provide otherwise.

During our phone conversation, you mentioned that any aggrieved members of the Northumberland County TCC could file a declaratory judgment action seeking relief from your interpretation of the TCC bylaws. Although that certainly is an option, such an action would impose costs on public bodies – and their taxpayers – that would be preferable to avoid. By contrast, assuming you issue a revised opinion, in light of the clarity brought to this situation by the enclosed PASBO bylaws form, it is hard to imagine any public body wasting taxpayer dollars to challenge such an obviously correct revised decision.

As mentioned, if you have questions or comments regarding this letter, please do not hesitate to contact me.

Sincerely,



Howard L. Kelin

cc: Mr. Stephen Curran