Comment of Michael Henry, Esq. on behalf of PA Taxicab Association and its members
2/3/12

2336 SOUTH BROAD STREET – PHILADELPHIA, PA 19145
TELEPHONE: 215-218-9800 – FACSIMILE: 215-218-9249
Web Site: www.mshenrylaw.com
E-mail: mshenry@mshenrylaw.com

February 3, 2012

Director James R. Ney
Taxicab and Limousine Division
Philadelphia Parking Authority
2415 S. Swanson Street
Philadelphia, Pennsylvania 19148

Re: Wheelchair Taxicab Regulation (300) 120123
Comments of the Pennsylvania Taxicab Association

Dear Director Ney:

Please be advised that I represent the Pennsylvania Taxicab Association and its members, who own and operate a large percentage of the medallion taxicabs currently operating within the City of Philadelphia that subject to the Authority's regulatory control.

First, the Pennsylvania Taxicab Association and its members support the Authority's goal of making reasonable accommodations for the transportation needs of the disabled community within Philadelphia. The Association will encourage its members to offer accessible transportation options to the disabled community on a voluntary basis and will cooperate with the Authority in implementing programs that are required by law, provided that the Authority complies with proper rulemaking procedures and respects the rights of the regulated community in pursuing its goals.

That being said, the Association is concerned that, unlike its previous rulemaking, the Authority has made no attempt to comply with the statutory rulemaking procedures of the Commonwealth Documents Law or the Regulatory Review Act in the present rulemaking. Coincidentally, the Authority published notice of the present rulemaking on its website on the very day that the Pennsylvania Supreme Court issued its decision in *Germantown Cab Company vs. Philadelphia Parking Authority*, __ A.2d __, (Pa. 2012), 2012 Pa. LEXIS 149, which held that the Authority is a Commonwealth agency and, as such, must comply with the statutory rulemaking requirements of the Commonwealth Documents Law, 45 Pa. Stat. Ann. §§ 1102-1602 and 45 Pa.C.S. §§ 501-907 and the Regulatory Review Act, 71 P.S. §745.1-745.15. I have attached a copy of the Supreme Court's decision and incorporate it herein as a part of these comments and request that it be included in the posting of these comments.

Given the fact that the Authority created a lengthy regulatory void after it promulgated regulations in June of 2005 without complying with these procedures, it is critical that the Authority avoid repeating that mistake in the present rulemaking. Because its goals are a matter of public importance, not only to the disabled community, but to the entire city, the Authority owes it to all of us to pursue the present rulemaking in a manner that will result in rules that are binding on the regulated community. The Supreme Court made it clear that regulations promulgated by the Authority without following mandatory rulemaking procedures do not have the force and effect of law and are not valid for any purpose.

Even if the Authority finds the requirements of the rulemaking process annoying and burdensome, there are many good reasons for the Authority to act in a lawful and orderly manner when it adopts rules that affect an entire industry. The General Assembly designed and developed rulemaking procedures in order to protect the rights of the public and the regulated community and to help agencies produce better rules. The Authority should embrace these procedures as a matter of good government. These rules distinguish our society from societies, such as the former Soviet Union, where the government issues diktats from a central planning committee. Those governments have been relegated to the dust heap of history and we should avoid repeating their mistakes even for matters involving the mundane issues of taxicab regulation.

If the Authority proceeds without following the required procedures, the regulated industry will institute an action in the Commonwealth Court to force the Authority to comply with the law. Although we are reluctant to do so, obedience to the rule of law by the Authority is a non-negotiable point. Forcing the regulated industry to take such action is not in the best interests of anyone as it will delay the implementation of policies that will benefit the disabled community, as well as the community at large.

In addition to the statutory rulemaking procedures applicable to all Commonwealth agencies, the Association insists that the proposed regulations be submitted to the Advisory Committee at one of its official meetings. Submission to the Advisory Committee via email is not sufficient and does not comply with the statutory requirements of the Parking Authorities Law. We respectfully request that the Authority proceed in a lawful and orderly manner to fulfill its obligations with regard to the Advisory Committee. Once again, respect for the rule of law enhances the legitimacy of any action by the Authority, increases the faith of the regulated community in the fairness of the process and reduces the possibility of the litigation and delay that will most assuredly result from the Authority's failure to proceed lawfully.

With regard to the merits of the proposed regulations, the Association is not convinced that the Authority has chosen the best course forward and believes that the entire process would benefit from the initiation of a formal investigation to determine the nature and the scope of the need for handicapped accessible transportation and the best methods for meeting those needs. The manner in which the Authority is proceeding seems backwards. The Authority should not simply have a knee-jerk reaction to the

institution of a federal lawsuit and should take the time to conduct a thorough investigation in these issues. It should hear the testimony of witnesses from the disabled community, the regulated industry and the public at formal hearings before the Authority's Hearing Officer, who will issue findings of fact and make recommendations on the best way forward.

The proposed rulemaking does not appear to be the product of a thoughtful and thorough analysis of the issues that will confront the regulated industry in implementing a program of this magnitude. It focuses superficial issues of no particular relevance, such as the height at which the box holding the tickets for the lottery will be held, and ignores the many important issues concerning the impact the regulations will have on the regulated community.

For example, nearly all medallion owners have entered into financial obligations in reliance on an expected return on their investments. Has the Authority studied, or even considered, how the increased costs of providing handicapped accessible transportation will impact the expected return on investment for medallion owners? There are many questions that arise in connection with this issue. But, in its rush to react to the federal lawsuit instituted by the disabled community, the Authority appears to have put little or no thought into these issues. What accommodations will the Authority make to help medallion owners pay for the increased costs of complying with the new regulations?

With regard to the specific equipment requirements, the Authority has specified side-loading vehicles. Has the Authority studied, or even considered, rear-loading vehicles for the provision of handicapped accessible vehicles? What factors did the Authority consider in choosing only side-loading vehicles?

Clearly, the Authority needs to develop a robust record to support its proposed rulemaking. No other city in the United States has pursued a goal as ambitious as the one being proposed by the Authority in this proceeding. This should give the Authority pause and encourage it to proceed in a deliberate and orderly process. The current rulemaking gives the public and the regulated industry the impression that the Authority is acting in an impulsive and reckless way, which will only cause harm to the laudable goal of achieving universally accessible transportation for the disabled community.

In closing, we respectfully request the Authority to withdraw the current rulemaking proceeding and initiate a formal investigation into the need and means for providing universally accessible transportation to the disabled community.

Respectfully submitted,

Michael S. Henry

Attachment

[J-79A-D-2011]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

GERMANTOWN CAB CO.,
Appellee
v.

PHILADELPHIA PARKING AUTHORITY,
Appellant
:::::::::::::
No. 10 EAP 2011
Appeal from the Order of the
Commonwealth Court entered on 4/28/10
at No. 1252 CD 2009 reversing the order
of the Philadelphia Parking Authority dated
6/11/09 at No. 08-12-19
GERMANTOWN CAB CO.,
Appellee
v.
PHILADELPHIA PARKING AUTHORITY,
Appellant
:::::::::::::
No. 11 EAP 2011
Appeal from the Order of the
Commonwealth Court entered on 4/28/10
at No. 1253 CD 2009 reversing the order
of the Philadelphia Parking Authority dated
6/8/09 at No. 09-03-17
SAWINK, INC.,
Appellee
v.
::::::::
No. 12 EAP 2011
Appeal from the Order of the
Commonwealth Court entered on 4/28/10
at No. 1139 CD 2009 reversing the order
of the Philadelphia Parking Authority dated
4/21/09 at No. 09-02-25
[J-79A-D-2011] - 2
PHILADELPHIA PARKING AUTHORITY,
Appellant
:::::::
GERMANTOWN CAB CO.,
Appellee
v.
,
PHILADELPHIA PARKING AUTHORITY,
Appellant
:::::::::::::
No. 13 EAP 2011
Appeal from the Order of the
Commonwealth Court entered on 4/28/10
at No. 1444 CD 2009 reversing the order

of the Philadelphia Parking Authority dated
7/1/09 at No. 09-03-19
ARGUED: September 14, 2011
OPINION
MR. JUSTICE SAYLOR DECIDED: January 20, 2012
In 2001, the Pennsylvania General Assembly divested the Mayor of Philadelphia of appointment authority for members of the governing body of the Philadelphia Parking
Authority and placed such prerogative with the Governor of Pennsylvania. In 2004, the
Legislature allocated to the Authority certain regional regulatory functions pertaining to
taxi and limousine services. This Court has previously determined that the Parking
Authority is a Commonwealth agency for purposes of such regulation. The Authority
has maintained, nonetheless, that, in light of the primarily local focus of its regulatory
concern, it should not be held to statutory rulemaking procedures and requirements
generally applicable to other Commonwealth agencies, but which the Authority
[J-79A-D-2011] - 3
considers to be inapposite and burdensome as applied to it. In a unanimous, en banc
decision, the Commonwealth Court disagreed, and, presently, we affirm.
I. Background
Appellees, Germantown Cab Company and Sawink, Inc., suffered fines and suspensions for violations of regulations promulgated by the Philadelphia Parking Authority (the "Authority" or the "PPA"), including those pertaining to driver licensure,
currency of vehicle inspection, and tire tread wear. The companies pursued declaratory
relief and appellate remedies, claiming, solely, that the Authority's regulations were
invalid, since they were not filed with the Legislative Reference Bureau in accordance
with the Commonwealth Documents Law,[1] which is generally applicable to Commonwealth agencies.[2] The Authority took the position that its regulations were
proper, albeit they were not promulgated in accordance with the CDL, in light of the
Authority's unique local focus and consistent with provisions of its enabling legislation.[3]
[1] Act of July 31, 1968, P.L. 769, No. 240 (as amended 45 P.S. §§1102-1602 (the "Unconsolidated CDL"), and 45 Pa.C.S. §§501-907 (the "Consolidated CDL") (and,

collectively, the “CDL”)). See 45 P.S. §§1205, 1207.

[2] The declaratory judgment proceedings were dismissed based on the availability of alternative remedies via the appeal proceedings. See Blount v. PPA, No. 265 M.D. 2006 (Pa. Cmwlth. Sep. 8, 2009). The appeal proceedings traveled a circuitous route, as they also were initially dismissed by the Commonwealth Court upon a determination that it lacked jurisdiction, see Blount v. PPA, 920 A.2d 215 (Pa. Cmwlth. 2007) (en banc), but such decision subsequently was reversed. See Blount v. PPA, 600 Pa. 277, 965 A.2d 226 (2009).

[3] See Act of June 19, 2001, P.L. 287, No. 22 (as amended 53 Pa.C.S. §§5501-5517) (the “Parking Authorities Law”); Act of July 16, 2004, P.L. 758, No. 94 (as amended 53 Pa.C.S. §§5701-5745) (“Act 94”).

The Commonwealth Court ultimately sustained the appeals. See, e.g., Germantown Cab Co. v. PPA, 993 A.2d 933, 936 (Pa. Cmwlth. 2010) (en banc).[4] The intermediate court’s rationale was anchored on this Court’s decision holding that the PPA “is a Commonwealth agency for the purposes of regulating taxicabs.” Id. at 936 (quoting Blount, 600 Pa. at 289, 965 A.2d at 234); see also id. at 938. Thus, the court had little difficulty determining that the CDL’s requirements imposed upon “an agency” -- such as the requirement that an agency must give specified public notice of its intention to promulgate any administrative regulation, 45 P.S. §1201 -- pertained on their terms. See Germantown Cab, 993 A.2d at 936, 938.[5]

Complementing this analysis, the Commonwealth Court reviewed the Authority’s history, including: its creation upon the enactment of the 1947 Parking Authorities Law;[6] the reconstitution of the PPA’s governing body in 2001 (resulting, inter alia, in the replacement of the complement of board members appointed by the Mayor of Philadelphia with a slate appointed by the Governor of Pennsylvania), see 53 Pa.C.S. §5508.1; and the 2004 transfer -- under Act 94 -- of a portion of the responsibility to

regulate regional taxicab and limousine services from the Public Utility Commission to the Authority, see 53 Pa.C.S., Ch. 57 (captioned, “Taxicabs and Limousines in First Class Cities”).

[4] The Commonwealth Court’s opinions in the other captioned matters are unpublished.

[5] Accord id. at 937-38 (explaining that the CDL defines “agency” to include “the Governor or any department, departmental administrative board or commission, officer, independent board or commission, authority or other agency of this Commonwealth now in existence or hereafter created . . . .” (quoting 45 P.S. §1102(3)) (emphasis in original)).

[6] Act of June 5, 1947, P.L. 458 (as amended 53 P.S. §§341-356) (superseded).

In terms of taxicab and limousine services regulation, the Commonwealth Court explained that, prior to Act 94, the Pennsylvania Public Utility Commission (the “PUC”) bore this responsibility throughout the Commonwealth, with the specific measures pertaining to Philadelphia directed by the Medallion Act.[7] The court further observed that Act 94 supplanted the Medallion Act -- replacing it with Chapter 57 of the Parking Authorities Law, 53 Pa.C.S. §§5701-5745 -- and that, in June 2005, the Authority promulgated the regulations presently in issue.

The Commonwealth Court then undertook a broad review of the laws governing the promulgation of regulations by Commonwealth agencies, developing that agencies generally must comply not only with the CDL, but also with the Commonwealth Attorneys Act,[8] as well as the Regulatory Review Act.[9] The court noted that regulations promulgated in accordance with the requirements of these statutes have the force and effect of law; whereas, those not in compliance lack such effectiveness. See Germantown Cab, 993 A.2d at 937 (citing Snizaski v. WCAB (Rox Coal Co.), 586 Pa. 146, 163, 891 A.2d 1267, 1277-78 (2006), and Borough of Bedford v. DEP, 972 A.2d 53, 62 (Pa. Cmwlth. 2009)); see also 45 P.S. §1208 (“An administrative regulation or change therein promulgated after the effective date of this act shall not be valid for any purpose until filed by the Legislative Reference Bureau[.]”). Focusing, in particular,

upon the CDL, the intermediate court discussed the salutary purposes of the statute in terms of the promotion of public participation; the related requirement that an agency invite, accept, review, and consider written comments from the public, see id. §1202;

[7] Act of Apr. 4, 1990, P.L. 93, No. 21 (as amended 66 Pa.C.S. §§2401-2416) (superseded).

[8] Act of Oct. 15, 1980, P.L. 950, No. 164 (as amended 71 P.S. §§732-101 to 732-506).

[9] Act of June 25, 1982, P.L. 633, No. 181 (as amended 71 P.S. §§745.1 to 745.14).

the authority of agencies to conduct public hearings where appropriate, see id.; the requirement to obtain approval from the Attorney General as to legality, see id. §1205; and the ultimate obligation to deposit the text of the regulation with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. See id. §§1205, 1207.

Against this backdrop, the Commonwealth Court rejected the Authority's arguments that, as "a unique hybrid agency with a local focus,"[10] it should be deemed exempt from statutory rulemaking procedures generally applicable to Commonwealth agencies. According to the court, the applicability of the CDL does not turn on an agency's particular focus; rather, it applies by terms to "all agencies, past, present and future, regardless of their mission." Germantown Cab, 993 A.2d at 941. While recognizing that there are exceptions, the intermediate court determined that, under Section 508 of the CDL, these must be express. See 45 Pa.C.S. §508 (prescribing that "[n]o subsequent statute shall be held to supersede or modify the provisions of this part except to the extent that such statute shall do so expressly" (emphasis added)). The court explained that the General Assembly had provided such express exemptions in other statutes, for example, the Agricultural Development Act, see 3 P.S. §1310, and the Gaming Act, see 4 Pa.C.S. §1203(a)(1). Additionally, that court commented, "[i]n vain will one search the Parking Authorities Law for comparable language."

Germantown Cab, 993 A.2d at 942; accord id. at 941 (“First, and foremost, the Parking
Authorities Law does not expressly exempt the Authority from the Commonwealth
Documents Law.”).

[10] Brief for PPA in Germantown Cab Co. v. PPA, 993 A.2d 933 (Pa. Cmwlth. 2010) (No.
1252 C.D. 2009), at 15; see also 53 Pa.C.S. §5701.1(3) (alluding to the Authority’s
“local focus”). See generally Blount, 600 Pa. at 289, 965 A.2d at 234 (referring to the
Authority as “an entity unlike any other in Pennsylvania”).

The Commonwealth Court further differed with the Authority’s position that the specificity requirement reposed in Section 508 of the CDL did not extend to the CDL’s
separate, unconsolidated portions reflecting some of the statute’s core requirements.
See supra note 1 (referencing both the Consolidated CDL and the Unconsolidated
CDL). According to the court, the consolidated and unconsolidated portions of the CDL
are inextricably linked, such that Section 508 has general application to the promulgation of all Commonwealth agency regulations. See Germantown Cab, 993
A.2d at 941 n.19.

The PPA also claimed that the terms of Act 94 and the Parking Authorities Law created an exemption, in any event. In the first instance, the Authority relied on the
provision of Act 94 authorizing rulemaking on its part, as follows:

> The authority may prescribe such rules and regulations as it deems necessary to govern the regulation of taxicabs within cities of the first class under this chapter. The authority has the powers set forth in this section notwithstanding any other provision or law or of the articles of incorporation of the authority.

Id. at 938-39 (quoting 53 Pa.C.S. §5722) (emphasis in original).[11] The Commonwealth
Court, however, took a narrower view of this prescription, explaining:

> The provision means just that, i.e., that regardless of what other statutes may state about the powers of any authority, including other parking authorities, the Philadelphia Parking Authority has the power to adopt regulations. Indeed, at oral argument, the Authority acknowledged that it had never adopted a regulation in its history, which began in 1950, until it promulgated its taxicab regulation. Section 5722

[11] The passages of Act 94 pertaining to regulation of limousine services contain a parallel provision. See 53 Pa.C.S. §5742. Throughout the briefs, the arguments involving both taxicab and limousine services regulation are essentially the same, and
our decision here is to be read as concerning both.

establishes the Authority's power to adopt taxicab
regulations. It is silent about the procedures by which the
Authority will exercise that power. Those procedures are set
forth in the Commonwealth Documents Law, and they apply
to all Commonwealth agencies when they exercise their
statutory power to promulgate regulations.

Germantown Cab, 993 A.2d at 941 (emphasis in original).

Additionally, the Authority gleaned support for its position from its express exemption from the requirements of the Commonwealth Attorneys Act,[12] suggesting that
an in pari materia construction should be applied to extend such exemption to the CDL.

The Commonwealth Court, however, regarded the scope of the express exemption
more narrowly, finding that it did not so much as extend to the entire Commonwealth
Attorneys Act, let alone to the CDL. See Id. at 942.

The intermediate court also differed with the PPA's position that the advisory committee created under Act 94 comprised a substitute rulemaking structure. See 53
Pa.C.S. §5702(a) ("There is hereby established an advisory committee to be known as
the City of the First Class Taxicab and Limousine Advisory Committee."). In this regard,
the court observed that the statute was indefinite in terms of what must be submitted to

[12] The relevant provision of the Parking Authorities Law states:

(d) An authority has all powers necessary or convenient for
the carrying out of the purposes under this section, including:
* * *
(25) In cities of the first class, to appoint and fix the
compensation of chief counsel and assistant counsel to
provide it with legal assistance. The provisions of the act of
October 15, 1980 (P.L. 950, No. 164), known as the
Commonwealth Attorneys Act, shall not apply to parking
authorities in cities of the first class.

53 Pa.C.S. §5505(d)(25) (emphasis added).

this committee, and the committee's actions were "strictly advisory" in any event.

Germantown Cab, 993 A.2d at 939 n.15 (quoting 53 Pa.C.S. §5702(a)); see also id.
(remarking that "[t]he advisory committee is not a substitute for the role of the Attorney
General and the Independent Regulatory Review Commission in the regulatory review
process").
Turning to the Authority's claim that a regulatory void would occur were it deemed to lack the ability to implement regulations very quickly, the Commonwealth
Court cited to Section 22(2) of Act 94, which provided that salient rules and regulations
of the PUC would remain in effect until specifically amended, rescinded, or altered by
the Authority. See 53 Pa.C.S. §5701 (Historical and Statutory Notes) (quoting Act 94,
§22). The court reasoned that:

> The Authority's concern about a regulatory void is valid as a matter of good government. However, that concern does not relieve the Court of the obligation to enforce the applicable statutes as they are written. In any case, the Authority has options. The Authority may be able to take enforcement actions for violation of Chapter 57, independent of any implementing regulation. It is not as clear to the Court, as it is to the Parking Authority, that the PUC's regulations have been nullified where the Authority has not yet adopted a valid regulation. In any case, the Commonwealth Documents Law allows an agency to promulgate a regulation on an emergency basis if
>
> [t]he agency for good cause finds . . . that the procedures specified in sections 201 and 202 [notice of proposed rule making and consideration of written comments] are in the circumstances impracticable, unnecessary or contrary to the public interest.
>
> 45 P.S. §1204(3). Finally, or course, the Authority may seek relief from the legislature.

Germantown Cab, 993 A.2d at 943 (footnote omitted and alterations in original).

The Commonwealth Court's ultimate holding reflected that, because the Authority's regulations were not deposited with the Legislative Reference Bureau per
Section 207 of the Unconsolidated CDL, 45 P.S. §1207, Section 208 dictated that they
were not valid for any purpose, id. §1208. See Germantown Cab, 993 A.2d at 942-43.

II. Arguments

Presently, the PPA elaborates on the contentions it advanced before the Commonwealth Court, arguing, principally, that Act 94 specifically replaced the statutory rulemaking procedure applicable to statewide agencies with a streamlined process tailored to the agency's more local mission and focus. It is the Authority's position that this state of affairs is amply reflected in terms of its delegated authority to promulgate regulations "notwithstanding any other provision or law." Brief for the PPA at 17 (quoting 53 Pa.C.S. §5722 and contending that "[t]his language shows the intention of the General Assembly to exempt the PPA from the traditional Commonwealth rulemaking process, including the Commonwealth Documents Law and the Regulatory Review Act").[13]

Indeed, according to the Authority, the notwithstanding-other-law term has no role, meaning, or effect other than as an exemption from the CDL. In response to the Commonwealth Court's reasoning – i.e., that Section 5722 is intended merely to unequivocally confer rulemaking authority and not to circumscribe attendant procedures

[13] In various instances in its main brief, however, the PPA recognizes that the notwithstanding-other-law language "could have been more precise" in terms of conveying the meaning the Authority ascribes to it. Brief for the PPA at 17; see also id. at 23 ("The 'notwithstanding' language in Section 5722 is open to different interpretations."). In other passages, nonetheless, the Authority couches the provision as "a clear and direct expression of the intention to exempt the PPA from the Commonwealth Documents Law and other parts of the statewide rulemaking process."

Id. at 17.

– the PPA contends that, were this the case, the notwithstanding-other-law proviso would be surplusage. In this regard, the Authority explains that the Statutory Construction Act already prioritizes specific statutory provisions (such as a conferral of the power to prescribe taxicab regulations under Section 5722) over more general ones (i.e., any other statutes concerning the power to adopt regulations).[14] Moreover, according the Authority, there simply are no statutory provisions conflicting with the Commonwealth Court's interpretation of Section 5722, thus rendering the

notwithstanding-other-law term devoid of meaning and impossible to execute, again,
were the court's understanding of Section 508 to prevail. See 1 Pa.C.S. §§1921(a),
1922(1), (2).[15] The Authority references City of Philadelphia v. Clement & Muller, Inc.,
552 Pa. 317, 715 A.2d 397 (1998) (holding that the meaning of a notwithstanding-otherlaw
proviso was straightforward in reinforcing the plain meaning of the legislative prescription to which it was attached), as an example of a decision in which this Court
afforded a natural effect to similar terms.[16]

[14] See 1 Pa.C.S. §1933; Brief for the PPA at 25 ("[T]here is no need for the General
Assembly to create a special rule for resolving conflicts between Section 5722 and other
statutes. The General Assembly has already created such rules in the Statutory Construction Act.").

[15] Attempting to reinforce its position that the notwithstanding-other-law language serves
a special purpose in its particular case, the Authority indicates that its power to promulgate regulations is otherwise consistent with that of all other all parking authorities. For the proposition that all parking authorities possess rulemaking powers,
the Authority cites Section 5508.1 of the Parking Authorities Law. See Brief for the PPA
at 26.
By its terms, however, Section 5508.1 pertains only to cities of the first class (i.e., Philadelphia). See 53 Pa.C.S. §5508.1(a). Thus, the Authority's argument, in this regard, is not well considered.

[16] In this regard, however, Clement & Muller lends greater support to the Commonwealth Court's and Appellees' position than the Authority's, since they ascribe
(continued…)

The Authority acknowledges that an explicit statutory reference to the CDL would have been "a more precise method" of creating an exemption to the statutory rulemaking procedures. Brief for the PPA at 30. It nevertheless provides a lengthy
refutation to the position of the Commonwealth Court and Appellees that an express
exemption is required, under Section 508 of the Consolidated CDL. See 45 Pa.C.S.
§508. In its first point along these lines, the Authority sets out to prove that Section 508

simply does not extend to the Unconsolidated CDL (and in particular, its Sections 207
and 208, upon which the Commonwealth Court's opinion was grounded). In this regard,
the PPA accurately explains that Section 508's language is keyed to "the provisions of
this part," which is Part II of Title 45 of the Pennsylvania Consolidated Statutes, entitled
"Publication and Effectiveness of Commonwealth Documents." Thus, the Authority
urges, Section 508 has no application to Chapter 5 of Title 45 of the Pennsylvania
Statutes, where the unconsolidated portion of the CDL is reposited (since said chapter
is not within "the provisions of this part" specified in Section 508).[17]

Next, the PPA contrasts the statutory language used to convey rulemaking power to it with that which pertained to the PUC in its previous regulation of taxicabs in Philadelphia. The Authority develops that the PUC was authorized to "prescribe such
rules and regulations as it deems necessary to govern the regulation of taxicabs in cities
of the first class pursuant to the provisions of [Chapter 24 of the Public Utility Code]."
Brief for the PPA at 33 (66 Pa.C.S. §2412 (repealed)). Stressing that the enabling
(…continued)
to the more straightforward meaning of the main pronouncement of Section 5722, i.e.,
simply that the Authority is afforded the power to make rules and regulations. See 53
Pa.C.S. §5722.

[17] In advancing this argument, the Authority provides an extensive discussion of how it
is that the CDL came to be divided into consolidated and unconsolidated parts. See
Brief for the PPA at 30-32.

statute pertaining to the PUC contained no notwithstanding-other-law modifier, the PPA
reiterates that "[t]he addition of the second sentence in Section 5722 must have some
meaning." Id.[18]

In its next line of argument, the Authority posits that the General Assembly must have intended to create a streamlined rulemaking procedure for its use, since compliance with the burdensome and time consuming procedures required under the

CDL would have resulted in a regulatory void. The Authority acknowledges, as it must,
that the Legislature specifically addressed the transition of regulatory authority from the
PUC, inter alia, as follows:
Regulations, orders, programs and policies of the
commission under 66 Pa.C.S., Ch. 24 [the "Medallion Act"]
and concerning limousine service regulation within cities of
the first class shall remain in effect until specifically
amended, rescinded or altered by the authority.
Act 94, §22(2). Nevertheless, the PPA asserts that "nothing indicates that Section 22(2)
was intended to continue the validity of the PUC's regulations, orders, programs and
policies after the transfer of regulatory oversight and the corresponding repeal of the
PUC's statutory authorization under the Medallion Act." Brief for the PPA at 38
(emphasis in original).[19] In this respect, the Authority also argues that the PUC's

[18] See also Brief for the PPA at 34 ("Given these differences in language, it is clear that
the PPA was given broader regulatory power than the PUC. While the PUC is required
to be consistent with and comply with the statewide rulemaking laws, such as the
Commonwealth Documents Law and the Regulatory Review Act, the Authority is
specifically exempted from such laws and may promulgate regulations notwithstanding
the procedural steps used by other Commonwealth agencies.").

[19] The Authority's arguments along this line are difficult to follow, as they depart from the
plain language used by the Legislature precisely to prevent the regulatory void the
Authority insists would occur absent localized rulemaking procedures.

(continued…)

regulations and policies could not be given any effect after the PUC was divested of
jurisdiction and the underlying legislation, the Medallion Act, was repealed.[20] Finally, in
a rather circular argument, the PPA relies on its own actions in promulgating regulations
outside the framework of the CDL as supplanting the PUC's rules and regulations.[21]

The Authority's next main line of contention posits that the Legislature's affordance of an express exemption from the Commonwealth Attorneys Act, see 53
Pa.C.S. §5505(d)(25), demonstrates that the Assembly also meant to grant an

exemption from the CDL. In developing this argument, the PPA observes that, within
(…continued)
Indeed, the statutory provision immediately preceding Section 22(2) makes clear that
the Legislature intended to shift the PUC's regulatory powers to the Authority for its
prospective use in regulating taxicabs and limousines. See Act 94, §22(1) ("The [PUC's] . . . powers, duties, contracts, rights and obligations which are utilized or accrue
in connection with the functions under [the Medallion Act] and in connection with limousine regulation in cities of the first class shall be transferred to the Philadelphia
Parking Authority in accordance with an agreement between the commission and the
authority." (emphasis added)). Section 22(1) dovetails with Section 22(2)'s extension of
the validity of PUC regulations, orders, programs, and policies indefinitely into the Authority's tenure. In light of these explicit transfer-related provisions, it is difficult to
afford any credence to the PPA's repeated refrain that it "was not explicitly empowered
to enforce any of the PUC's regulations[,] orders, programs and policies or the Public
Utility Code itself." Brief for the PPA at 39.

[20] This argument appears to overlook the General Assembly's prescription for the continuing enforcement of the PUC's rules and regulations by the Authority, per Section
22 of Act 94. See supra note 19.

[21] The circuitousness arises from the interdependence of the Authority's argument with
its success on its central claim that it is not otherwise subject to the CDL. To the degree
the Authority must, in fact, comply with the CDL, its invalidly promulgated regulations
are not to be given any effect for any purpose. See 45 P.S. §1208. Thus, if the CDL
applies, the Authority's invalidly promulgated regulations cannot, in and of themselves,
be deemed to have supplanted the PUC's regulations, which were transferred into the
Authority's regulatory province along with the power to enforce them. See Act 94, §§21,
22.

the provisions of the Commonwealth Attorneys Act delineating responsibilities of the Pennsylvania Attorney General, the enactment specifies that "[t]he Attorney General shall review for form and legality, all proposed rules and regulations of Commonwealth agencies before they are deposited with the Legislative Reference Bureau as required by section 207 of the [CDL]." 71 P.S. §732-204(b). According to the Authority, by exempting it from the Commonwealth Attorneys Act, the Legislature thus "eliminated a level of review" generally required within the Commonwealth rulemaking process. Brief for the PPA at 18. The PPA takes issue with the Commonwealth Court's position that the Legislature meant only to permit the Authority to appoint its own legal staff, both because the exemption from the Commonwealth Attorneys Act is broadly phrased in Section 5505(d)(25), see Brief for the PPA at 44 ("Importantly, Section 5505(d)(25) of the Parking Authority Law cites to the entire Commonwealth Attorneys Act."), and because the Commonwealth Attorneys Act internally authorizes independent agencies, such as the Authority, to appoint their own legal staff in any event. See 71 P.S. §732-401; compare id. §732-301 (providing for the appointment, by General Counsel, of such chief counsel and assistant counsel as are necessary for the operation of each executive agency).

In its arguments pertaining to the Commonwealth Attorneys Act, the PPA stresses the statute's interrelationship with the CDL. In this respect, the Authority urges an in pari materia construction to support the conclusion that, when the Legislature said "the Commonwealth Attorneys Act," it also meant "the Commonwealth Documents Law." See, e.g., Brief for the PPA at 48 ("The Commonwealth Court failed to recognize that both statutes are related intrinsically to each other, and are fundamental components of the statewide regulatory review process for Commonwealth agencies[;] . . . [i]n short, you cannot have one without the other.").[22]

Underlying all of the Authority's arguments is its belief that there simply is no

practical reason to subject it to a cumbersome regulatory review process. In the PPA's view, its practices of providing notice and of conferring with its advisory committee are an adequate substitute for the CDL's formalized and time-consuming procedures. See, e.g., id. at 21-22 (indicating that the Authority's advisory committee "ensures that the entire evolutionary process of a regulation is transparent and accessible to all interested parties" and "serves the same functions as [the] IRRC"). The Authority also perceives no need to subject it to the requirements of the Regulatory Review Act, given that the Governor maintains a degree of oversight by way of the appointment process. See id. at 25. Furthermore, the PPA expresses the concern that the invalidation of its regulations endangers the public, as its prescriptions are designed to assure the maintenance of safe, quality taxicab and limousine service. See, e.g., id. at 50-51 ("Without the ability to enforce these basic safeguards, passengers and the general public face the risk of injury or death from the operation of taxicabs in Philadelphia.").

Finally, the Authority explains that, in an abundance of caution, it has moved forward with a proposed rulemaking in compliance with the statutory rulemaking regime generally applicable to Commonwealth agencies.

Appellees, for their part, place prime emphasis on Section 508 of the Consolidated CDL, which, again, provides that "[n]o subsequent statute shall be held to

[22] Similarly, the Authority argues that, because it has been treated as exempt from the requirement, under the Administrative Code, of preparation of a fiscal note relative to proposed regulations by the Office of Budget, see 71 P.S. §232, this also should be taken to mean that it is exempted from the requirements of the CDL. See Brief for the PPA at 49-50.

supersede or modify the provisions of this part except to the extent that such statute shall do so expressly." 45 Pa.C.S. §508. They regard the bulk of the PPA's arguments as distracting, prolix, and ineffectual attempts to divert focus from this controlling

requirement of an express exemption. Thus, for instance, Appellees maintain that there is no relevance to the Authority's status as a "hybrid agency" or relationship with an advisory committee. Appellees also do not regard Section 5722's notwithstandingother-law proviso as supplying the necessary, express exemption. Consistent with the Commonwealth Court's analysis, Appellees express confidence that the General Assembly knows how to craft an express exemption from the CDL when it wishes to do so.[23]

Appellees further take issue, on their terms, with most of the implications the PPA derives from Act 94 and its other enabling legislation. For example, Appellees highlight that the salutary purpose of the CDL is to promote public participation in the promulgation of Commonwealth agency regulations. See Germantown Cab, 993 A.2d at 937. To that end, Appellees do not regard the Authority's non-specified notice procedures and the potential conferral with a "strictly advisory" committee as any kind of an adequate substitute. 53 Pa.C.S. §5702(a).

As to the Commonwealth Attorneys Act, Appellees view the statutory exemption in Section 5505(d)(25) as confined thereto and not as extending to the CDL. Appellees explain that the cross-reference to the CDL relied upon by the PPA appears within a

[23] As examples, supplementing the Commonwealth Court's references to the Agricultural Development and Gaming Acts, Appellees also reference: the Farm Safety and Occupational Health Act, 3 P.S. §§1901-1915 (see id. §1913); the Consolidated Weights and Measures Act, 3 Pa.C.S. §§4101-4194 (see id. §4112(d)); the Domestic and Sexual Violence Victim Address Confidentiality Act, 23 Pa.C.S. §§6701-6713 (see id. §6712); and the Public School Code of 1949, 24 P.S. §§1-101 to 27-2702 (see id. §13-1376(c.8)).

portion of the Commonwealth Attorneys Act addressing the duties of the Attorney General, and thus, it does not concern the type of requirement from which the Authority might be exempted. Moreover, Appellees do not believe that generally exempting an

agency from the Commonwealth Attorneys Act has the corollary effect of alleviating the Attorney General's duties under that statute, or of negating the agency's own duties and obligations under an entirely distinct statute (namely, the CDL). Appellees do not necessarily ascribe to Commonwealth Court's narrower interpretation of the PPA's exemption from the requirements of the Commonwealth Attorneys Act, but, in all events, they do not regard such exemption as yielding a derivative one relative to the distinct requirements of the CDL.[24]

Appellees further develop that the regulatory review process pertaining to Commonwealth agency rulemaking evolved on account of the General Assembly's concern with the large number of regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact, and conformity to legislative intent. See 71 P.S. §745.2. In terms of the Regulatory Review Act, Appellees indicate:

> The intended purpose of the RRA is to establish a method for ongoing and effective legislative review and oversight in order to foster executive branch accountability; to provide for primary review by a commission with sufficient authority, expertise, independence and time to perform that function; to provide ultimate review of regulations by the General

[24] See Brief for Appellees at 16 ("Whether the Commonwealth Court was correct in its assessment of the Authority's exemption from the CAA, is irrelevant since it is clear that the General Assembly requires other agencies to comply with the CDL, despite granting exemptions to the entire CAA." (citing 4 Pa.C.S. §§1201.1(b)(2), 1202(a)(2) (exempting the Gaming Control Board from the requirements of the Commonwealth Attorneys Act, while at the same time subjecting the agency, as a general rule, to compliance with statutory rulemaking procedures))).

> Assembly; and to assist the Governor, the Attorney General, and the General Assembly in their supervisory and oversight functions. To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the

commission, the standing committees, interested parties and
the agency.
Brief for Appellees at 17.
Appellees also highlight that, generally, when the Legislature has granted exemptions from the CDL, the purpose is to allow the agencies to fill the regulatory gap
that would otherwise have existed between the effective date of their enabling acts and
the date the agencies completed the normal statutory rulemaking process. See supra
note 23 (reflecting examples of statutes representative of the drafting technique used
toward such end). It is Appellees' position that a similar exemption was unnecessary in
the PPA's circumstance, since the Legislature specifically addressed the potential for a
regulatory gap in Act 94's Section 22, via PUC regulations already in place and adopted
by that agency in accordance with the required rulemaking procedures. See Act 94,
§22. In this regard, Appellees stress that the PPA's allusions to a regulatory void squarely contradict Act 94's clear and unambiguous language. See supra notes 19-20.

III. Discussion

Resolution of these appeals requires us to interpret the CDL and the enabling statutes governing the PPA. As to such matters of law, our review is plenary. See, e.g.,
Alekseev v. City Council of Phila., 607 Pa. 481, 484, 8 A.3d 311, 313 (2010).
The en banc Commonwealth Court has amply laid the groundwork for addressing the Authority's present challenge, as related above. Since the Authority is a Commonwealth agency for relevant purposes, see Blount, 600 Pa. at 289, 965 A.2d at
234, the CDL's procedural requirements pertaining to rulemaking by such agencies
facially apply, in the absence of some type of exemption. At least with respect to the

requirements reposited in the Consolidated CDL,[25] the General Assembly specifically
has required that exemptions must be express. See 45 Pa.C.S. §508.
Indeed, in its reply brief, the PPA recognizes that "the effectiveness of any exemption from the 1976 part [of the CDL, i.e., the Consolidated CDL] is dependent on
naming or citing thereto." Reply Brief for the PPA at 6 n.16. In light of this understanding -- which is common among the prior reviewing court and now the litigants

-- the Authority has gone to great lengths to attempt to portray a firewall between the consolidated and unconsolidated portions of the CDL to insulate itself from Section 508's reach. We are unable to credit the PPA's perspective in this regard, however, since, as the Commonwealth Court recognized, the two facets of the CDL are inextricably interwoven.

Initially, we appreciate that the process of attempting to consolidate statutes into a unified framework is a difficult, time-consuming, and exacting undertaking, which requires a sustained combination of painstaking effort, meticulous detail orientation, and political will and consensus. There are many examples of success in the undertaking, but the experience with the statutory rulemaking requirements applicable to Commonwealth agencies demonstrates that desired outcomes may be more difficult to achieve than may be hoped.

At least at one time, the General Assembly appears to have contemplated that these procedures would be reposited in Chapter 3 of Title 2 of the Pennsylvania Consolidated Statutes (encaptioned, "Promulgation of Regulations"). Chapter 3,

[25] See, e.g., 45 Pa.C.S. §722(c) ("Every agency . . . shall cause to be transmitted to the [Legislative Reference Bureau] for deposit as herein provided two certified duplicate original copies of all documents issued, prescribed or promulgated by the agency . . . which are required by or pursuant to this subchapter or any other provision of law to be deposited or published, or both, under this part[.]").

however, presently remains empty, serving only as a placeholder bearing a "reserved" designation. See 2 Pa.C.S., Ch.3.

The Legislature's intentions for this chapter can be gleaned from the 1976 legislation embodying the Codified CDL, since, in various locations, this statute makes reference to Chapter 3. See, e.g., 45 Pa.C.S. §§722, 901, 905. Of course, such references were aspirational in character, as the chapter did not exist at the time (as it still does not), nor did the broader Title 2. To compensate for such otherwise empty references, the General Assembly provided translational instructions, as follows:

Conversion of references pending codification of Title 2.—
Pending codification of Title 2 of the Pennsylvania

Consolidated Statutes (relating to administrative law and procedure) a reference in Title 45 of the Pennsylvania Consolidated Statutes to "Subchapter A of Chapter 3 of Title 2 (relating to regulations of Commonwealth Agencies)" shall be deemed a reference to sections 102 and 201 through 208 of the [Unconsolidated CDL] and a reference to "2 Pa.C.S. § 301 (relating to notice of proposed rule making)," "2 Pa.C.S. § 302 (relating to adoption of administrative regulations)," "2 Pa.C.S. § 305 (relating to approval as to legality)," "2 Pa.C.S. § 306 (relating to format of regulations)," or "2 Pa.C.S. § 308 (relating to unfiled administrative regulations invalid)" shall be deemed to be a reference to sections 201, 202, 205, 206, or 208 of said act, respectively.

Act of July 9, 1976, P.L. 877, No. 160, §4.

While these instructions seem straightforward enough, a difficulty arises from the fact that Title 2 was enacted in 1978, but it did not contain the contemplated scheme of regulation for Commonwealth agency rulemaking (i.e., a Chapter 3). See 2 Pa.C.S., Ch. 3 (reserved) (entitled "Promulgation of Regulations"). Nevertheless, at least on their face, the translational instructions would appear to have expired (since they were designed to be effective only until the enactment of Title 2).

A provision of Title 2 appears to have been designed to account for this lapse. In Section 103(b), the Legislature provided a shorthand version, as follows:

(b) Rule making references – Whenever any statute makes reference to the Administrative Agency Law for procedures relating to the promulgation of administrative regulations, such reference shall hereafter be deemed to be a reference to the [Unconsolidated CDL].

2 Pa.C.S. §103(b). This provision, however, also appears to suffer from a drafting oversight, since the "Administrative Agency Law" is defined in the preceding subsection as encompassing only Subchapters A of Chapters 5 and 7 of Title 2, which concern practice and procedure of Commonwealth agencies and judicial review of agency action, but do not concern themselves with agency rulemaking. See id. §103(a). In this landscape, the Consolidated CDL and the Unconsolidated CDL have been read in the only way in which they can be sensibly understood, that is, according to the original translational directions (and consistent with the apparent purpose of Section 103(b)), so that the Consolidated CDL materially incorporates the Unconsolidated CDL.

For example and of substantial relevance here, Section 722(c) of the

Consolidated CDL provides:

> Every agency . . . shall cause to be transmitted to the bureau for deposit as herein provided two certified duplicate original copies of all documents issued, prescribed or promulgated by the agency . . . which are required by or pursuant to this subchapter or any other provision of law to be deposited or published, or both, under this part; in default of which any such document, except a document rendered entirely void by such default pursuant to 2 Pa.C.S. §308 (relating to unfiled administrative regulations invalid) or any similar provision of law, shall be effective only to the extent provided in section 903 of this title (relating to effective date of documents).

45 Pa.C.S. §722(c) (emphasis added). Under the original translational instructions, the reference to "2 Pa.C.S. §308" is plainly directed to Section 208 of the Unconsolidated CDL, 45 P.S. §1208. Moreover, given that the contemplated consolidation of rulemaking procedures within Chapter 3 of Title 2 did not come to pass, this is the only rational way in which the statute can be read to this day.

Notably, the integral interrelationship between the consolidated and unconsolidated portions of the CDL works in both directions. For example, various passages of the Unconsolidated CDL make material references to its own Section 409 as providing for the manner in which agency regulations were to be deposited with the Legislative Reference Bureau. See, e.g., id. §§1207, 1208. Section 409, however, was repealed upon the enactment of the Consolidated CDL, which provided an updated treatment for that subject matter. See Act of July 9, 1976, P.L. 877, No. 160, §7. Therefore, as is reflected in the text of the Purdon's compilations of the Unconsolidated CDL, the only sensible way to read the extant references to Section 409 is as being to the correlative terms of the Consolidated CDL. See 45 P.S. §§1207, 1208 (Purdons) (providing explanatory footnotes attached to the textual reference to former Section 409 as follows: "45 P.S. §1409 (repealed; see, now, 45 Pa.C.S.A. §501 et seq.)"). To read the statutes otherwise would contravene the presumption that the General Assembly

intends the entire statute to be effective and certain. See 1 Pa.C.S. §1922(2). The Authority's own arguments appear to reflect an appreciation that references to Title 2 contained in the Consolidated CDL must be read as being directed to the Unconsolidated CDL.[26] Indeed, although caution in the application of the doctrine of in

[26] See, e.g., Reply Brief for the PPA at 4-5 (citing Section 905 of the Consolidated CDL for the proposition that the statute refers to the Unconsolidated CDL, apparently based on the understanding that Section 905's references to absent Title 2 provisions are to be taken as directed to the Unconsolidated CDL).

pari materia is warranted,[27] there would seem to be no better instance in which an in pari materia overlay would be justified than as to the CDL. See 1 Pa.C.S. §1932(b) ("Statutes in pari materia shall be construed together, if possible, as one statute). Presently, it is also meaningful that the Consolidated CDL overlaps with the Unconsolidated CDL in material respects. For example, several provisions of the Consolidated CDL reflect the requirement of deposit with the Legislative Reference Bureau as the essential prerequisite to such codification. See 45 Pa.C.S. §§509 ("Format of documents"), 722 ("Deposit of documents required"); see also supra note 25. Furthermore, and as noted, the Consolidated CDL itself also delineates the consequences of a failure to follow the prescribed procedures in terms of invalidity. See 45 Pa.C.S. §722(c). Accordingly, the Authority's argument that Section 508's requirement of an express exemption does not extend beyond the terms of the Consolidated CDL cannot insulate the Authority from the CDL's core regulatory requirements. At best, the Authority's main argument turns on the tenuous proposition that Appellees and/or the Commonwealth Court failed to select the correct passages from within an inextricably interrelated statutory scheme in support of their positions (i.e., a passage such as Section 722(c), as to which Section 508's requirement of an express exemption would apply most directly).

As developed above, however, there simply is no firewall between the Consolidated CDL and the Unconsolidated CDL. Thus, whether the Commonwealth Court and Appellees may have cited Section 207 and 208 of the Unconsolidated CDL or

to Section 722(c) of the Consolidated CDL, a Commonwealth agency is required to

[27] See, e.g., Oliver v. City of Pittsburgh, 608 Pa. 386, 394-95, 11 A.3d 960, 965-66 (2011) (expressing circumspection about the application of such principle and declining to extend an in pari materia construction to particular provisions of the Workers' Compensation Act and the Heart and Lung Act).

deposit regulations with the Legislative Reference Bureau as a prerequisite to their effectiveness. Moreover, Section 508 reflects that, when the General Assembly wishes to afford exemptions from such requirement, it will make its intentions express. In summary, the PPA has acknowledged that an express exemption, as contemplated by Section 508, requires a naming or citation to the CDL. See Reply Brief for the PPA at 6 n.16. As discussed above, it is clear that Section 508 extends to exemptions from the requirement of the deposit of regulations with the Legislative Reference Bureau. Since neither the Parking Authorities Law nor Act 94 names or references the CDL in the conferral of an exemption, the Commonwealth Court properly rejected the Authority's claims.

In light of the above, the Authority's remaining arguments might reasonable be viewed as being collateral. To the degree that the Authority did not intend that such arguments would be displaced by its acceptance that an express exemption under Section 508 requires naming or citation to the CDL, we take this opportunity to comment briefly on the alternative contentions.

In terms of the Authority's arguments centered on the notwithstanding-other-law language employed in the conferral of its rulemaking power, see 53 Pa.C.S. §5722, we have substantial reservations about reading too much into such language. As reflected in the discussion above, in the process of legislative drafting, the General Assembly is faced with a complex landscape of existing statutes, many of which are amenable to differing interpretations by litigants and have yet to be finally interpreted or construed by the courts. Against such a background, the notwithstanding-other-law language serves

to emphasize the priority the Legislature places on a contemporaneous pronouncement.

In the PPA's case, in terms of statutes with which the Legislature may have been concerned, one need look no further than the Parking Authorities Law, which appears

on its face to center the regulatory decision-making of most municipal parking authorities around "fix[ing], alter[ing], charg[ing], and collect[ing] rates and other charges." 53 Pa.C.S. §5505(d)(9). As such, the Authority simply is asking too much in seeking a construction of the Assembly's unprecedented decision to vest a parking authority with broad regulatory powers over certain carriers and imbue it with concomitant rulemaking authority "notwithstanding any other provision or law" as necessarily subsuming material corollaries beyond what is manifested in the enabling language.

The same can be said about the exemption from the "Commonwealth Attorneys Act," id. §5505(d)(25), in that the Authority asks us to read far too much into said exemption, effectively translating it into one from "the Commonwealth Attorneys Act, the Commonwealth Documents Law, and the Regulatory Review Act." The legislative shorthanding involved in broadly exempting an agency from a statute which covers far more ground than the mere delineation of agency responsibilities is bound to yield some degree of ambiguity. Since, however, an ambiguity is not tantamount to an express exemption, we reject the PPA's invitation to discern a derivative exemption from the salient requirements of the CDL. See 45 Pa.C.S. §508.[28]

The exemption from provisions of the Administrative Code discussed by the Authority is not express on the face of Act 94 or the Parking Authorities Law,[29] but

[28] As the Commonwealth Court's reasoning reflects, the context of the exemption – i.e., its location within a passage of the Parking Authorities Law addressing the appointment of counsel – is also instructive. See supra note 12 (quoting 53 Pa.C.S. §5505(d)(25)).

[29] See Brief for the PPA at 49 (explaining that the exemption is reflected in determinations of the Independent Regulatory Review Commission and the Attorney General, which did not require a fiscal note for the PPA's proposed regulations, as

otherwise would be required under Section 612 of the Administrative Code, 71 P.S.
§232).
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rather, is a discrete consequence arising out of the fact that the Authority is self-funded.
See Brief for the PPA at 49. Accordingly, we find it to be of little relevance here.
The Authority's allusions to a regulatory void raise legitimate public policy concerns, but these are not persuasive in terms of the requirement to comply with the
CDL for the reasons we have discussed above. See supra notes 19-20. As explained,
the General Assembly took pains to assure that the PUC's rules and regulations would
remain extant until the Authority provided differently, apparently contemplating that the
Authority would do so in an orderly and lawful fashion. See Act 94, §22. To the extent
that a regulatory void has unfolded, this reasonably may be viewed as a result of the
PPA's failure to take protective measures to maintain the integrity of the regulatory
framework it inherited from the PUC throughout the years during which it has been
contesting its Commonwealth agency status, see Blount, 600 Pa. at 277, 965 A.2d at
226, then litigating the fallback position that it was otherwise exempted from the rulemaking requirements applicable to Commonwealth agencies. In any event, it is the
terms of the material statutes – and not the ensuing anecdotal experience – which
governs the statutory interpretation. Moreover, since that the PPA's presently promulgated regulations cannot be deemed valid for any purpose, see 45 P.S. §1208;
45 Pa.C.S. §722(c), those regulations themselves, at least, do not serve as an impediment to enforcement by the Authority of the prior regulatory regime until it can
comply with its rulemaking responsibilities as a non-exempt Commonwealth agency.[30]

[30] Notably, the PUC's Medallion Program regulations, which were reposited in Chapter
30 of Title 52 of the Pennsylvania Code, subsumed requirements aimed at the protection of public safety correlating to the PPA regulations at issue here (including
licensure and vehicle inspection requirements).

Comment of ADAPT of Texas 2/3/12

February 3, 2012

Charles Milstein, Esq.
Assistant to the Director
Taxicab & Limousine Division
Philadelphia Parking Authority
2415 S. Swanson Street
Philadelphia, PA 19148
T 215-683-9637
F 215-683-9437
E-Mail CMilstein@Philapark.org

Dear Mr. Milstein,

My name is David Wittie. I and the Disability Community that I represent STRONGLY support the proposed regulations regarding Wheelchair Accessible Taxicabs. These regulations, if approved as proposed, will end the Philadelphia Parking Authority's discrimination against Philadelphians and others with disabilities who are seeking to use taxicabs like everyone else.

I am a resident of Austin, Texas and have a mobility disability that requires that I use an electric wheelchair. I am a qualified individual with a disability within the meaning of the ADA and Section 504. I am a community organizer for ADAPT, a national disability rights organization, as well as a volunteer with ADAPT of Texas.

In June of 2011, I traveled to Philadelphia to attend a national ADAPT meeting. When I landed at the airport, I asked the ground transportation staff about getting a taxi to my hotel in downtown Philadelphia. After more than thirty minutes of calling taxi companies and shuttle services, they eventually informed me that there were no taxicabs in the city that could drive me because none of them could accommodate my wheelchair. I had no choice but to navigate the train system and lug my bags along with me through the streets and traffic of downtown Philadelphia during rush hour. By the time I arrived at my hotel, I was exhausted. I want to visit Philadelphia in the future but want to use their taxicabs like everyone else.

Yours for a Barrier Free Community,

David Wittie, Community Organizer-ADAPT of Texas

cc via email: Dennis Weldon
Steve Gold
Nancy Salandra

1640A E 2nd ST Ste. 100 * Austin, TX 78702-4412 * 512/442-0252 * 512/442-0522 fax *
adapt@adapt.org

Comment of Gavin Kerr, Inglis Foundation 2/7/12

Dear Mr. Milstein and Mr. Ney,

The Inglis Foundation continues to work to strongly support the introduction of accessible cabs into service across the Philadelphia region. In just the few months that Freedom Cab has been operating, many of the over 900 people with physical disabilities we serve have benefited from their service. We have seen and heard how access to safe, convenient cab service has opened up their lives with visits to family and friends and participation in community activities that are nearly impossible due to the limitations of their current transportation options.

We have also begun to study the business side of providing accessible cabs and are concerned that the implementation of this service is accomplished in a safe, thoughtful and supportive manner. As a result of this work, we have drawn three conclusions that we hope the Commission will consider:

1. **All cabs must be safe, accessible and designed for the realities** of Philadelphia's busy boulevards and narrow side streets. Involvement of consumers and transportation experts in the promulgation of the final design specifications for the cabs will ensure that they afford safety and accessibility for all wheelchair users and profitability for the cab owners.
2. **All cab drivers must be trained to be disability competent**. This means that the drivers understand both the importance of safely tying down wheel chairs and are committed to taking the time to do it right for the safety of the passenger and the driver. Disability competence means understanding the challenges of living and traveling with a disability. And most of all, it means having the sensitivity and compassion to treat their customers with dignity, respect and patience no matter how significant their disability.
3. **Access to capital will be a substantial barrier to getting cabs on the streets**. Inglis is interested in helping address the capital issues and would welcome the opportunity to meet with you to explore ways that regional foundations could come together to provide lower interest loans to encourage small business owners to make the additional investment needed to put an accessible cab on the streets.

Thank you for moving this important service forward. One of the most devastating elements of living with a disability is the isolation that comes when one can no longer walk out the door and hop a cab to go to work, to school and to visit with family and friends. Please feel free to call on me or any of the Inglis community if we can help move this initiative forward in the coming weeks and months.

Gavin

Comment of Sherry Nurre 2/6/12

Dear Mr. Milstein,
I would like to write to express my concern of being in favor of increasing the number of wheelchair accessible taxis in Philadelphia. There are not enough handicapped spaces downtown and am shocked that a city of this size doesn't have laws for taxi cabs. On a recent visit to Philadelphia, I stayed with a friend who is wheelchair bound and we wanted to experience an event downtown. I was surprised to hear that there were not cabs for us to get into to head downtown.

Please consider changing the laws for the sake of the large wheelchair bound community that lives in the surrounding area wanting to experience what everyone else is entitled to.

Comment of Roger Margulies, Assistant Deputy Mayor/ Executive Director 2/7/12

CITY OF PHILADELPHIA

MAYOR'S COMMISSION ON
PEOPLE WITH DISABILITIES
1401 John F. Kennedy Blvd.
Room 900, MSB
Philadelphia, PA 19102-1660
(215) 686-2798 (215) 564-1782 (TDD)
(215) 686-4555 (Fax)
MICHAEL A. NUTTER
Mayor
ROGER A. MARGULIES
Assistant Deputy Mayor/ Executive Director
CHARLES W. HORTON, JR.
Deputy Director/Accessibility Compliance Specialist

February 7, 2012
Mr. Charles Milstein
Director's Assistant
Taxicab and Limousine Division
2415 S. Swanson Street
Philadelphia, PA 19148

Dear Charles Milstein:

Thank you for the opportunity to provide testimony regarding the Philadelphia Parking Authority's plan to have 300 wheelchair accessible taxis on the streets of Philadelphia bythe end of the year.

On behalf of the Mayor's Commission on People with Disabilities (MCPD) and the over 350,000 constituents with disabilities we applaud Vince Fenerty, Executive Director of the Philadelphia Parking Authority for his strong resolve to integrate citizens with disabilities into the mainstream.

Further, his foresight to make every taxicab wheelchair accessible by 2016 will make Philadelphia a leader in providing accessible transportation to both residents, tourists, and convention visitors. It will mean more convention and tourism business for our great City.

MCPD concurs with others including wheelchair accessible vehicle vendors and disability advocates that rear entry vans are more affordable and can maneuver more easily on some of Philadelphia's many narrow streets. It will also make entering and exiting the vans easier for both the passengers and drivers.

Additional reasons for selecting rear entry vehicles include not having to cut the frame rails while a side entry requires cutting both sides leaving the mainframe of the vehicle stronger and intact. A rear entry conversion is raised higher in the back allowing for is no turning required to get the wheelchair and passenger into the travel position.

Another important factor is that rear entry vehicles can double-park more easily for loading and unloading. These vehicles also can accommodate up to a 34" ramp which can handle a larger number of wheelchairs and scooters.

It is mandatory that taxi drivers and dispatch personnel be given comprehensive sensitivity training on how to serve passengers with a broad spectrum of disabilities and their family, attendants or friends. In addition, drivers must always follow the safety regulations and make sure that passengers use seatbelts and that all assistive devices are secured and/or locked.

MCPD is available to work closely with wheelchair accessible taxicab companies in order that our expertise and support can assist taxicab service providers and passengers.

Sincerely,

Roger 7 . Margulies

Assistant Deputy Mayor/Executive Director

Cc: Charles W. Horton, Jr., Accessibility Compliance Specialist
Mimi Kenney