

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Germantown Cab Co., :  
Petitioner :  
v. : No. 1444 C.D. 2009  
Philadelphia Parking Authority, : Argued: November 5, 2009  
Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE BERNARD L. McGinley, Judge  
HONORABLE DAN PELLEGRINI, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: April 28, 2010

Germantown Cab Company petitions for review of an adjudication of the Philadelphia Parking Authority, which imposed a \$1,500 fine upon Germantown Cab and suspended the operation of one of its cabs for 30 days. The Authority imposed these sanctions because it found that Germantown Cab had violated the Authority's taxicab regulation. Germantown Cab challenges the adjudication as invalid as a matter of law because the regulation in question was not promulgated in

accordance with the Commonwealth Documents Law<sup>1</sup> and, as such, is unenforceable. It follows, according to Germantown Cab, that the Authority's adjudication is also a nullity. We agree and reverse the adjudication.

In 1947, the General Assembly created municipal parking authorities with the enactment of the Parking Authorities Law, Act of June 5, 1947, P.L. 458, *as amended*, 53 P.S. §§341-356. This law granted all municipal parking authorities the power and duty to regulate on-street and off-street parking. In 2001, the General Assembly codified and amended the Parking Authorities Law, placing it in Title 53 of the Consolidated Statutes, "General Local Government Code," 53 Pa. C.S. §§5501-5517. The consolidated statute, *inter alia*, established an entirely separate statutory regime for Philadelphia's parking authority.<sup>2</sup> In 2004, the General Assembly amended Title 53 to give the Philadelphia Parking Authority the additional responsibility to regulate taxicab and limousine service in and around Philadelphia. Act of July 16, 2004, P.L. 758, No. 94 (Act 2004-94).

Prior to the enactment of Act 2004-94, the Pennsylvania Public Utility Commission (PUC) had been responsible for the regulation of taxicab and limousine service throughout Pennsylvania. With respect to Philadelphia, the PUC's responsibilities were set forth in the Medallion Act, 66 Pa. C.S. §§2401-2416. Act 2004-94 repealed the Medallion Act and replaced it with Chapter 57 of the Parking

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<sup>1</sup> Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§1102-1602, and 45 Pa. C.S. §§501-907, which, collectively, are known as the "Commonwealth Documents Law." This was the official short title of the 1968 enactment. *See*, Section 101 of the Act of July 31, 1968, P.L. 769.

<sup>2</sup> The 2001 Parking Authorities Law differentiates between parking authorities in cities of the first class, and other parking authorities. Philadelphia is Pennsylvania's only city of the first class.

Authorities Law. 53 Pa. C.S. §§5701-5745.<sup>3</sup> The legislature established the effective date of Chapter 57 as 270 days from July 16, 2004, (April 13, 2005) or the date notice appeared in the *Pennsylvania Bulletin* of a transfer of regulatory responsibility from the PUC to the Authority, whichever occurred earlier. Sections 24 and 25 of Act 2004-94, 53 Pa. C.S. §5701 (historical and statutory notes).<sup>4</sup> Notice appeared in the

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<sup>3</sup> The General Assembly had first attempted to transfer regulation of taxicab and limousine service to the Authority by enacting the Act of December 30, 2002, P.L. 2001, No. 230, which added Chapter 57; however, this act was held unconstitutional by our Supreme Court in *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 838 A.2d 566 (2003) because it was enacted in violation of the Pennsylvania Constitution's single subject rule. Therefore, Act 2004-94 re-enacted and amended Chapter 57.

<sup>4</sup> Those sections provide in relevant part:

Section 24. The Pennsylvania Public Utility Commission shall transmit notice of the entry into the agreement under section 22(4) of this act to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

Section 25. This act shall take effect as follows:

- (1) The following provisions shall take effect in 270 days or on the date of publication of the notice under Section 24 of this act, whichever is earlier:
  - (i) The addition of 53 Pa. C.S. Ch. 57.

Sections 24 and 25 of Act 2004-94, 53 Pa. C.S. §5701(notes). Section 22(4) states:

The commission shall assist the authority to prepare for the transfer and to ensure a smooth transition with as little disruption as possible to public safety, consumer convenience and the impacted industries. The commission and the authority are empowered to resolve by mutual agreement any jurisdictional issues that may be associated with the transfer. Any agreement shall be reported to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives and will be considered effective unless either the Senate or the House of Representatives rejects the submitted agreement by resolution within ten legislative days of submission. Upon becoming effective, an agreement shall be published in the *Pennsylvania Bulletin*.

Section 22(4) of Act 2004-94, 53 Pa. C.S. §5701(notes).

March 12, 2005, edition of the *Pennsylvania Bulletin*. 35 Pa. B. 1737 (2005). Accordingly, Chapter 57 became the law on March 12, 2005.

In June 2005, the Authority promulgated its own taxicab regulation.<sup>5</sup> It was under authority of that regulation that the Authority issued citations to Germantown Cab, which are the subject of this appeal.

The facts in this case are not in dispute. On February 4, 2009, a Taxicab Division Inspector, Steve Slobodrian, encountered Taxicab G-83, owned by Germantown Cab, dropping off a passenger at City Hall in Philadelphia.<sup>6</sup> Slobodrian pulled over the taxi because he had received an e-mail that it was not allowed to operate in the city. Upon inspection, Slobodrian discovered that Taxicab G-83 had no inspection sticker and that the taxi had over 250,000 miles on it, which barred its further use in Philadelphia. Because these problems constituted violations of the Authority's taxicab regulation, Slobodrian issued two citations to Germantown Cab:

- 1) Citation T-04082 was issued for allowing Taxicab G-83 to "operat[e] outside of rights," in violation of Regulation Section 29.

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<sup>5</sup> The Authority amended the regulation on July 29, 2008. The Authority's regulation is available on its website. The Philadelphia Parking Authority – Taxicab and Limousine Regulations, July 29, 2008, <http://www.philapark.org/tl2/regulations.html>.

<sup>6</sup> In order to operate, all taxicabs must have a certificate of public convenience. A taxicab must also have a medallion in order to provide call and demand (hail) service within the City of Philadelphia. 53 Pa. C.S. §5714(a). Some taxicabs have "partial rights" meaning that they do not have medallions but may provide service within specified areas of Philadelphia, may transport persons to Philadelphia and may pick up passengers in Philadelphia if the request for service is received by call to the radio dispatch service. 53 Pa. C.S. §5714(d). Germantown Cab is a partial rights company.

2) Citation T-04083 was issued for allowing Taxicab G-83 to operate without a current Authority inspection, in violation of Regulation Section 15.

Reproduced Record at 1 and 2 (R.R. \_\_\_\_).<sup>7</sup>

Germantown Cab objected to the citations on the basis that the Authority did not properly promulgate the regulation which it charged Germantown Cab with violating. This argument was rejected. Based on Slobodrian's evidence, the hearing officer sustained the citations and imposed a \$1,500 fine and a 30-day suspension of Taxicab G-83's ability to operate.

Germantown Cab petitioned this Court for our review and, simultaneously, filed a motion to stay enforcement of the Parking Authority's order. This Court denied the stay. *Germantown Cab Co. v. Philadelphia Parking Authority*, (Pa. Cmwlth., No. 1444 C.D. 2009, filed July 29, 2009).

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<sup>7</sup> Regulation Section 29.i.i. states in relevant part:

Any vehicle that is found to be offering or providing, or that appears to offer or provide, Taxicab or Limousine service without [having proof that the vehicle has passed a current inspection conducted by the Authority] shall be considered an unauthorized service provider and shall be subject to being disabled and/or impounded by Authority Staff or Agents.

<http://www.philapark.org/tl2/regulations.html>. Regulation Section 15.a states in relevant part:

All vehicles are required to be inspected by the Authority twice annually at approximately six-month intervals.

R.R. 65. Regulation Section 13.d.i.1 specifies that certain taxicabs are not eligible to be inspected and, thus, cannot operate in Philadelphia. It states:

In no event may a vehicle intended for continued use as an Authority certified taxicab be presented for either the annual state inspection, the semi-annual safety inspection, nor any other regulatory inspection, with 250,000 miles or more.

R.R. 59.

In its appeal of the Authority's adjudication, Germantown Cab raises one issue.<sup>8</sup> It asserts that the Philadelphia Parking Authority's taxicab regulation, which formed the basis for the Authority's enforcement action, is invalid and unenforceable because it was not promulgated in accordance with the Commonwealth Documents Law. Specifically, Germantown Cab faults the Authority for not filing its taxicab regulation with the Legislative Reference Bureau, as required by Section 207 of the Commonwealth Documents Law. 45 P.S. §1207.<sup>9</sup>

This Court addressed this very issue in the companion case of *Germantown Cab Co. v. Philadelphia Parking Authority*, \_\_\_ A.2d \_\_\_ (No. 1252 C.D. 2009, filed April 28, 2010). There, we held that the taxicab regulation of the Philadelphia Parking Authority was not promulgated in accordance with the Commonwealth Documents Law and, thus, is void and unenforceable. That holding is dispositive in this case. Accordingly, we reverse the Authority's adjudication imposing sanctions upon Germantown Cab.

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MARY HANNAH LEAVITT, Judge

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<sup>8</sup> Three companion cases docketed at 1139 C.D. 2009, 1252 C.D. 2009 and 1253 C.D. 2009, raise the identical issue and were argued at the same time as the instant case.

<sup>9</sup> It states, in relevant part, as follows:

The agency text of all administrative and other regulations, and changes therein, certified by the executive officer, chairman or secretary of the agency, shall be deposited with the Legislative Reference Bureau.

45 P.S. §1207.

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**ORDER**

AND NOW, this 28<sup>th</sup> day of April, 2010, the order of the Philadelphia Parking Authority dated July 1, 2009, in the above captioned matter is hereby REVERSED.

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MARY HANNAH LEAVITT, Judge