[J-2-3-4-2008]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ALLEGHENY INSPECTION SERVICE, INC. AND STEEL CITY INSPECTION AGENCY, INC.,	:	No. 16 WAP 2007
Appellees	:	Appeal from the Order of the Commonwealth Court entered December 6, 2006 at No. 922 CD 2006, reversing the Order of the Court of Common Pleas of Fayette County entered April 20, 2006 at No. 846 of 2005.
v.	:	
NORTH UNION TOWNSHIP AND K2 ENGINEERING, INC.,	:	
Appellants	:	
ALLIED BUILDING INSPECTIONS	:	No. 17 WAP 2007
v.	:	Appeal from the Order of the Commonwealth Court entered December 6, 2006 at No. 42 CD 2006, reversing the Order of the Court of Common Pleas of Erie County entered December 22, 2005 at No. 14074-2004.
TOWNSHIP OF MILLCREEK AND BUILDING INSPECTION UNDERWRITERS OF PENNSYLVANIA, INC.	:	
v.	:	
FAIRVIEW TOWNSHIP AND HARBORCREEK TOWNSHIP	:	
APPEAL OF: BUILDING INSPECTION UNDERWRITERS OF PENNSYLVANIA, INC.	:	

ALLIED BUILDING INSPECTIONS	:	No. 18 WAP 2007
	:	
v.	:	Appeal from the Order of the
	:	Commonwealth Court entered December
TOWNSHIP OF MILLCREEK AND	:	6, 2006 at No. 42 CD 2006 reversing the
BUILDING INSPECTION	:	Order of the Court of Common Pleas of
UNDERWRITERS OF PENNSYLVANIA,	:	Erie County entered December 22, 2005
INC.	:	at No. 14074-2004.
	:	
v.	:	
	:	
FAIRVIEW TOWNSHIP AND	:	
HARBORCREEK TOWNSHIP	:	
	:	
APPEAL OF: TOWNSHIP OF	:	
MILLCREEK, FAIRVIEW TOWNSHIP	:	
AND HARBORCREEK TOWNSHIP	:	ARGUED: March 3, 2008

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: FEBRUARY 20, 2009**

I respectfully differ with the majority's position that Section 501 of the PCCA is subject to a straightforward, plain-meaning interpretation favorable to Appellants' position. Instead, I find inherent tension between the enactment's authorization of administration and enforcement by a municipality's retention of one or more non-employee construction code officials or third-party administrators, see 35 P.S. §7210.501(b)(2), and the provision of the statute which facially appears to be designed to account for the broader professional interests of all construction code officials certified by the Department of Labor and Industry, see 35 P.S. §7210.501(d) ("Nothing in this act shall allow a municipality to prohibit a construction code official who meets the requirements of Chapter 7 and remains in good standing from performing inspections in

the municipality.").[1] In my view, this conflict is most readily resolved by reference to the General Assembly's explicit direction that, subject to exceptions not applicable here, Section 501(d) applies notwithstanding other provisions of the Act. See id.[2]

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[1] In this regard, I agree with the majority's conclusion that the terms "administration and enforcement" and "inspection," as employed in the PCCA, overlap. I differ, however, with the majority's interpretation that "inspections" as used in Section 501(d) means only inspections other than those performed for purposes of PCCA administration and enforcement. See Majority Opinion, slip op. at 20. Significantly, in every other instance of the use of the term within the PCCA, the terms "inspect" and "inspection" implicates the opposite, namely, inspections performed for administration and enforcement purposes. See, e.g., 35 P.S. §§7210.103 (definitions of "construction code official," "municipal code official," and "third-party agency"), 7210.501(e) (discussing conduct of "the plan review and inspections" in the context of non-municipal administration). Indeed, one of the express purposes of the PCCA is "[t]o eliminate unnecessary duplication of effort and fees related to the review of construction plans and the inspection of construction projects." 35 P.S. §7210.102(5). An interpretation contemplating unnecessary, advisory, or superfluous inspections runs contrary to this objective. Moreover, under the majority's reading, which assigns a very limited role to Section 501(d), there would appear to be little reason for exceptions specified there, pertaining to employment of a municipal code official, joint enforcement with another municipality, or usage of the administration and enforcement mechanism of another municipality. See 35 P.S. §7210.501(d) ("This section does not alter the power and duties given to municipalities under subsections (b)(1), (3) and (4).").

[2] While, as Appellants observe, the Legislature has considered amendments which would clearly state its present intentions in this regard, see Majority Opinion, slip op. at 13-14, such proposals do not shed a great deal of light on the existing legislation. Notably, amendments may be advanced in furtherance of change, but they may also serve to clarify existing intent in light of controversies such as the present litigation. Moreover, the legislative process is highly fluid and dynamic, and thus, the specific intentions of current legislators measured at the present point in time cannot always be reconciled with those of their predecessors, or even the intentions of the same members now faced with different or evolving sets of considerations. Cf. HSP Gaming, L.P. v. City of Philadelphia, ___ Pa. ___, ___, 954 A.2d 1156, 1181 (2008) (explaining that "the statement of a later legislative body, concerning the intended meaning and scope of an enactment passed by legislative predecessors, is entitled to no particular deference").

In terms of the policy arguments, in light of the certification process and other checks referred to in the majority's discussion of Appellee's arguments, see Majority Opinion, slip op. at 17-18, I believe the social policy aspect is best left to the political branch. In this regard, I differ with the majority's supposition that municipalities and third-party administrators were left without recourse under the Commonwealth Court's holding, see Majority Opinion, slip op. at 20, as well as its conclusion that it would be unreasonable for the Legislature to factor broader interests of construction code officials into the overall compliance scheme. See id.

For the above reasons, I would affirm the order of the Commonwealth Court based on somewhat different reasoning.