[J-264-98]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

MARS EMERGENCY MEDICAL SERVICES, INC.,	:	59 W.D. Appeal Dkt. 1998
Appellant	:	Appeal from the Order of the Commonwealth Court entered on January 7, 1998 at 1218 C.D. 1997 affirming the Order entered on April 11, 1997 in the
v.	:	Court of Common Pleas, Butler County, Equity Division at EQ 94-50058
TOWNSHIP OF ADAMS AND BOROUGH OF CALLERY,	:	
Appellees	:	SUBMITTED: December 15, 1998

DISSENTING OPINION

MR. JUSTICE SAYLOR **DECIDED: OCTOBER 28, 1999**

I agree with the majority's conclusions that the EMS Act does not wholly preempt municipalities from selecting preferred primary emergency services providers,[1] that the absence of findings reconciling the local designation with the Act renders the disposition of Appellants' challenge defective, and that a remand is therefore appropriate. My

[1] I note, however, that my reasoning differs somewhat from the majority's, as I disagree with the emphasis which it places upon the General Assembly's directive to the Department of Health to involve local citizenry in the decisionmaking process. See 35 P.S. §6922(b)(3). This provision speaks to the participation of citizens within the framework of the Department's own efforts to plan, guide and coordinate the statewide system of medical service delivery. In my view, it has little bearing upon the issue of whether the General Assembly wished to permit the citizenry (as well as local governmental entities) to make, or preclude them from making, their own independent decisions impacting upon the system.

difference with the majority's disposition concerns only the character of the remand, as I would remand with instructions to stay the action pending reference of the question of compatibility to the Department of Health pursuant to the doctrine of primary jurisdiction.

The doctrine of primary jurisdiction has evolved to enable courts to reconcile overlapping functions of judicial and administrative tribunals by referring aspects of pending litigation to the administrative agency charged with regulating the subject matter in dispute. See generally Elkin v. Bell Telephone Co. of Pa., 491 Pa. 123, 420 A.2d 371 (1980); Ostrov v. I.F.T., Inc., 402 Pa. Super. 87, 586 A.2d 409 (1991); E.L.G. Enterprises Corp. v. Gulf Oil Co., 291 Pa. Super. 414, 435 A.2d 1295 (1981). It permits the judiciary to make use of the agency's experience and expertise in specialized areas and promotes consistency and uniformity in areas involving administrative policy. See generally Elkin, 491 Pa. at 132, 420 A.2d at 376 (stating that "[t]he doctrine '. . . requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme'" (quoting Weston v. Reading Co., 445 Pa. 182, 198-99, 282 A.2d 714, 723 (1977))).

The Department of Health is charged with the responsibility to plan, guide and coordinate the development of medical services into a unified statewide system, as well as to ensure such system's ongoing viability. See 35 P.S. §§6924-6925. In view of these statutory responsibilities, as well as the Department's specialization and experience, I believe that it is in a substantially superior position to the common pleas court to adjudge, in the first instance, the impact of the local designation of a preferred primary services provider upon the statewide system.

While the parties have not sought invocation of the doctrine of primary jurisdiction, since the doctrine functions to ensure proper distribution of power between judicial and administrative bodies (and not for the convenience of the parties), the common pleas court, as well as appellate courts, are vested with the authority to determine whether the doctrine

applies sua sponte. See generally Williams Pipe Line Co. v. Empire Gas Corp., 76 F.3d 1491, 1496 (10th Cir. 1996)(citing United States v. Western Pacific R.R. Co., 352 U.S. 59, 63, 77 S. Ct. 161, 164-65 (1956)). Thus, I find no jurisdictional impediment.

Since the need for consistency and uniformity in this area is as critical as it is apparent, I would remand with the instruction to refer.

Mr. Chief Justice Flaherty joins this dissenting opinion.