

[J-50-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GENE STILP,	:	No. 76 MAP 2006
	:	
Appellant	:	
	:	Appeal from the Order of the
	:	Commonwealth Court, entered on April
v.	:	24, 2006, at No. 513 MD 2005.
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	898 A.2d 36 (Pa. Cmwlth. 2006)
GENERAL ASSEMBLY, JACK WAGNER,	:	
AUDITOR GENERAL OF THE	:	
COMMONWEALTH OF PENNSYLVANIA,	:	SUBMITTED: March 26, 2007
DEPARTMENT OF AUDITOR GENERAL,	:	
ROBERT C. JUBELIRER, DAVID	:	
BRIGHTBILL, ROBERT MELLOW, JOHN	:	
M. PERZEL, SAM SMITH, H.W.	:	
DEWEESE, LEADERSHIP OF THE	:	
GENERAL ASSEMBLY, NOAH	:	
WENGER, LEGISLATIVE AUDIT	:	
ADVISORY COMMISSION, AND	:	
ROBERT P. CASEY, JR., TREASURER	:	
OF THE COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
Appellees	:	

GENE STILP	:	No. 80 MAP 2006
	:	
v.	:	
	:	Appeal from the Order of the
	:	Commonwealth Court, entered on April
COMMONWEALTH OF PENNSYLVANIA,	:	24, 2006, at No. 513 MD 2005.
GENERAL ASSEMBLY, JACK WAGNER,	:	
AUDITOR GENERAL OF THE	:	
COMMONWEALTH OF PENNSYLVANIA,	:	898 A.2d 36 (Pa. Cmwlth. 2006)
DEPARTMENT OF AUDITOR GENERAL,	:	
ROBERT C. JUBELIRER, DAVID	:	
BRIGHTBILL, ROBERT MELLOW, JOHN	:	
M. PERZEL, SAM SMITH, H.W.	:	SUBMITTED: March 26, 2007

DEWEESE, LEADERSHIP OF THE :
 GENERAL ASSEMBLY, NOAH :
 WENGER, LEGISLATIVE AUDIT :
 ADVISORY COMMISSION, AND :
 ROBERT P. CASEY, JR., TREASURER :
 OF THE COMMONWEALTH OF :
 PENNSYLVANIA :
 :
 :
 APPEAL OF: SENATORS JUBELIRER, :
 BRIGHTBILL, AND WENGER :
 :
 :

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: December 27, 2007

While I agree with the majority that the current or future Auditor General is, or will be, in a better position to pursue the specific declaratory relief sought by Appellant in this case, see Majority Opinion, slip op. at 13, I nonetheless hold a broader view of citizen-taxpayer standing than that expressed by my colleagues. In this regard, the majority is correct that this Court's opinion in Application of Biester, 487 Pa. 438, 409 A.2d 848 (1979), has been interpreted as setting forth a five-part, conjunctive test for establishing whether taxpayer standing is permissible in a particular case. See Majority Opinion, slip op. at 11 (citing Pittsburgh Palisades Park, LLC v. Commonwealth, 585 Pa. 196, 207, 888 A.2d 655, 662 (2005); Consumer Party of Pennsylvania v. Commonwealth, 510 Pa. 158, 170, 507 A.2d 323, 329 (1986)).¹ However, an examination of the Biester opinion reveals that it did not create the inflexible paradigm

¹ This test provides that a taxpayer has standing to sue if: (1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained-of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim. See Majority Opinion, slip op. at 11.

implied by later decisions. In this regard, the Biester Court simply noted that taxpayer suits have been permitted by the courts out of a concern that judicial review might otherwise be unavailable, and then observed that this “will most often occur when those directly and immediately affected by the complained of expenditures are beneficially affected as opposed to adversely affected.” See Biester, 487 Pa. at 445, 409 A.2d at 852. Significantly, however, the Court did not state that this scenario constituted a factual prerequisite for instituting a taxpayer suit. Similarly, the Biester Court merely indicated that, in examining whether taxpayer standing should be afforded in a given case, “[c]onsideration must be given to other factors such as, for example, the appropriateness of judicial relief, the availability of redress through other channels, or the existence of other persons better situated to assert the claim.” Id., 487 Pa. at 446, 409 A.2d at 852 (internal quotation marks, citations, and emphases omitted). Again, however, the Court did not imply that all of these factors must be present in a taxpayer suit. Indeed, it is only in subsequent cases that a conjunctive test has been construed from this language. See, e.g., Pittsburgh Palisades, 585 Pa. at 207, 888 A.2d at 662; Consumer Party of Pennsylvania, 510 Pa. at 170, 507 A.2d at 329. In my view, the earlier and less rigid standard announced in Biester presents a more appropriate means of effectuating the policy underlying the taxpayer exception to traditional standing requirements. See Biester, 487 Pa. at 445, 409 A.2d at 852; Faden v. Philadelphia Housing Authority, 424 Pa. 273, 278, 227 A.2d 619, 621-22 (1967) (stating that “the fundamental reason for granting [taxpayer] standing is simply that otherwise a large body of governmental activity would be unchallenged in the courts.”). For instance, use of this model would permit citizen-taxpayer challenges in situations such as that presented by the present controversy, where, although a government official might be

better positioned to challenge a particular governmental action, he or she is unwilling to do so.

That being said, however, I agree with the Commonwealth Court majority that, although Appellant may have standing to pursue his present action, he has not demonstrated that the Auditor General has either a constitutional or statutory obligation to conduct an audit of the General Assembly. See Stilp v. Commonwealth, 898 A.2d 36, 42 (Pa. Cmwlth. 2006). In this regard, the Commonwealth Court majority has provided a well-reasoned and correct analysis of the issue. I therefore concur with my colleagues' decision to affirm the judgment of the Commonwealth Court.

Mr. Justice Baer joins this concurring opinion.