

[J-67-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PROGRAM ADMINISTRATION	:	No. 136 MAP 2005
SERVICES, INC., F/K/A R.D. FOWLER &	:	
ASSOC., INC.,	:	
	:	Appeal from the Order of the
Appellee	:	Commonwealth Court entered on May 19,
	:	2005 at No. 2535 CD 2003, reversing the
	:	Order of the Court of Common Pleas of
v.	:	Dauphin County, Civil Division, entered on
	:	November 13, 2003 at No. 2992 S 2001
	:	
DAUPHIN COUNTY GENERAL	:	
AUTHORITY,	:	
	:	
Appellant	:	RE-SUBMITTED: May 18, 2006

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: August 20, 2007

I agree with the majority's decision to affirm the Commonwealth Court's order because the statutory scheme authorizes long-term contracts; however, I believe in order to enter into contracts that bind successor boards, there must be an ongoing benefit to the municipality.

The Pennsylvania Municipality Authorities Act allows the Authority "to make agreements with the purchasers or holders of the bonds or with others in connection with any bonds" 53 Pa.C.S. § 5607(d)(12). These agreements can be made up to 40 years in duration. Id. However, because the agreement with Appellee is solely for the administration and marketing of the bond program to school districts and not affiliated with the issuance or servicing of bonds, it falls outside the scope of §

5607(d)(12) and is more akin to an employment contract. Such a contract with Appellee violates the public policy against permitting a governmental entity to bind its successors in pursuing its governmental functions. See Commonwealth ex rel. Fortney v. Bartol, 20 A.2d 313, 314 (Pa. 1941) (“[A] municipal board having legislative authority ... cannot enter into a contract which will extend beyond the term for which the members of the body were elected.”). Nevertheless, as the majority suggests, long-term contracts are authorized and will be upheld absent a showing of bad faith. Majority Slip Op., at 13.

In addition to the good faith inception of the contract, I believe a benefit to the municipality must also result from the contract to justify binding successor boards into such agreements. Here, the Authority did not earn a profit pursuant to its “conduit financing,” but it is unclear whether there was any benefit, financial or otherwise, to the municipality through the continued use of Appellee’s services. It cannot be that the statute allows an out-going board to bind the municipality to 40 years of a one-sided agreement. I do not suggest this was such a deal, the record being bereft of evidence one way, or the other. Therefore, I would remand the case to the trial court for an evidentiary hearing to determine the benefit, if any, to the municipality through upholding the contract with Appellee.