

**[J-201-1999]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

|                        |   |   |
|------------------------|---|---|
| TOWNSHIP OF SUGARLOAF, | : | 121 Middle District Appeal Docket 1999    |
|                        | : |   |
| Appellee               | : | Appeal from the Order of the              |
|                        | : | Commonwealth Court dated December         |
| v.                     | : | 31, 1998, at 2134 C.D. 1997, Vacating the |
|                        | : | Order of the Court of Common Pleas of     |
|                        | : | Luzerne County dated July 7, 1997, at No. |
|                        | : | 2804-C of 1997, and Remanding the Case    |
| ANTHONY R. BOWLING,    | : | to the Court of Common Pleas for further  |
|                        | : | findings.                                 |
| Appellant              | : |   |
|                        | : | ARGUED: October 19, 1999                  |

**DISSENTING OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: October 19, 2000**

“The test of whether a court has jurisdiction over a particular controversy depends upon ‘the competency of the court to determine controversies of *the general class* to which the case presented for its consideration belonged, -- whether the court had power to *enter upon the inquiry*, not whether it might ultimately decide that it was unable to grant the relief sought *in the particular case.*” Commonwealth of Pennsylvania, Department of Public Welfare v. Court of Common Pleas of Philadelphia County, 485 A.2d 755, 758 (Pa. 1984) (emphasis supplied; citations omitted.); See *a/so Flynn v. Casa Di Bertacchi Corporation*, 674 A.2d 1099, 1105 (Pa. Super. 1996) (“The term ‘jurisdiction’ relates to the competency of the individual court, administrative body, or other tribunal to determine controversies of the general class to which a particular case belongs.”)

In Studio Theaters, Inc. v. City of Washington, 209 A.2d 802 (Pa. 1965), we quoted extensively from Zerbe Township School District v. Thomas, 44 A.2d 566 (Pa. 1945), in addressing the issue of whether a court has the authority to determine its own jurisdiction.

In Zerbe Township School District v. Thomas, ... we stated principles which are here applicable, namely that even though a plaintiff have no standing to bring his action, even though his complaint be demurrable, even though he fail to establish its allegations, even though the court should finally conclude that the relief he seeks should not be granted, not any or all of these circumstances would enter into, much less determine, the question whether the court had jurisdiction of the litigation. We there pointed out that the test of jurisdiction was the competency of the court to determine controversies of *the general class* to which the case presented for its consideration belonged, -- whether the court had power to *enter upon the inquiry*, not whether it might ultimately decide that it was unable to grant the relief sought *in the particular case* ....

209 A.2d at 805-805 (emphasis supplied).

“Although a court may have no jurisdiction over a particular subject matter, it may have jurisdiction to determine the question of its own jurisdiction.” Garder v. Cutler, 471 A.2d 449, 452 (Pa. Super. 1983), citing Commonwealth ex rel. Cook v. Cook, 449 A.2d 577, 581 (Pa. Super. 1982).

The majority concludes in this case that the issue of whether a particular matter is arbitrable pursuant to Act 111 is an issue which must be submitted first to the arbitrator, and that it is error to bring the issue of jurisdiction first to the trial court. I dissent as this holding is contrary to the well-settled principle that a court has jurisdiction to determine the question of its own jurisdiction. In this case, the ultimate resolution of the issue of whether the trial court has jurisdiction will rest on the employment status of Officer Bowling. At this stage of the proceedings, when the issue of jurisdiction has not been resolved, the trial

court is not deprived of its authority to address that issue. I would remand this matter to the trial court for further proceedings.