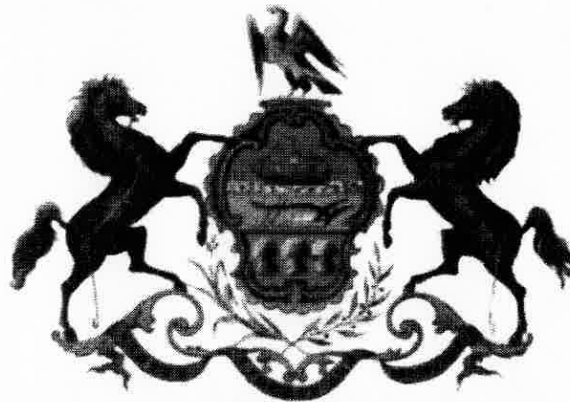

CONSTABLE GUIDE



Informative Guide to a Constables Authority

BY Constable James M Canning



MAY 1, 2020
OFFICE OF CONSTABLE
Athens Borough 4th Ward
Revised 3/11/2021

This guide was written with the hopes of clarifying some issues in consideration of what is and is not in the law regarding a constable's authority. If there are cases of law which are not in here and you feel it should be, please submit them and I will add them in another publication.

I did my best researching this, but there is always new laws and case laws that can be added when they go into effect. The goal in doing this, and putting these laws together, is so that you do not have to search for them in the future.

I would like to give thanks to all those who have helped in the research, without this assistance, some of this would not have been possible.

Thank you to all those who have helped.

ABOUT THE AUTHOR

Constable James Canning has been a Constable since 2012.

Prior to this, Constable Canning served in both the US Marines and the Army National Guard of several states. He has had multiple peace time deployments and two combat deployments, both as a Marine and an Army Soldier.

Constable Canning has been a Humane Police Officer, A State Certified Corrections officer, an armed security officer and an armed security agency owner, whose agency specialized in high crime, gang areas.

He is a trained Private Investigator from an accredited Pennsylvania School, he has consulted on international security operations, such as the London Olympics in 2012, for which he was published internationally in June of 2012 and maritime security for an international entity.

Disclaimer:

I, Constable Canning do not claim to be an expert, nor do you have to follow what is written, this is just a guide that may answer some questions you may have.

However, all information contained within this guide is taken from current PA law under Title 44, Pennsylvania Statutes, prior laws and case laws concerning a constable's authority.

James M Canning

A GUIDE FOR CONSTABLES

What is a PA State Constable?.....	Page 3
Definitions.....	Page 4
The Hatch Act.....	Page 5
Title 44, Law and Justice.....	Page 6
Authority of a constable and Service of Process.....	Page 6
Investigations.....	Page 7
Arrest in the Borough.....	Page 8
Report: Upon Constables of The Commonwealth (1927).....	Page 9
First Responder Status.....	Page 9
Comparable Authority with State and Local Police.....	Page 10
Title 11 – Power of Police to Arrest.....	Page 10
Pennsylvania Statutes Title 16 P.S. Counties § 4501. Employment of police.....	Page 11
Person to Serve a Warrant and additional Authorities.....	Page 11
13 P.S. § 40 Peace Officers; Powers And Duties.....	Page 11
16 P.S. § 5180. Transportation License for Vehicles.....	Page 12
Trespassing livestock and dog law.....	Pages 12 - 13
Writing citations and the authority to do so.....	Page 13
Citation – Rules of Criminal Procedure.....	Page 14
Traffic Laws, history, and case law.....	Pages 15 - 17
Review.....	Page 17
Constables; Children and Animal Cruelty Authority, History.....	Page 17
Power to initiate criminal proceedings.....	Page 18
Important Case Laws.....	Page 18
Case Law - Abbott V. Latshaw – Constables are State Actors.....	Page 18
Case Law - A Constable is a Police Officer and a Peace Officer.....	Page 19
Case Law - Arrest for Possession of a Controlled Substance with Intent to Deliver.....	Page 19
Training - Pennsylvania Commission of Crime and Delinquency.....	Page 20
Independent contractor status.....	Page 21
Constables during time of emergency.....	page 22
• Detailed look at how Constables may provide service during an emergency. From accidents to Declared Emergencies.	

What is a Pa State Constable?

A constable is a person elected to the *Public Office of Constable*. Constables by virtue of their office, are Public Officials, they are Peace Officers, they are Law Enforcement officers, and they are Police Officers.

A Constable is elected to the office for a 6-year term, constables can also be appointed, and they can have deputies.

Constable have been referred to as the people's law enforcement, as constables are elected by the people, to serve the people.

A constables authority stems from both common law and multiple state statutes. There is not just one law that list or states the full duties or authority of the constable.

Constables are also the oldest form of law enforcement in the state. A Constable has authority over civil matters and criminal. There are also laws that directed constables to enforce traffic as well.

It was from the office of Constable, that police departments were formed, with those officers given the authority of the constable. Next, was the State Police and the county police.

The laws currently in effect still provide that the police, state police and even the county detectives are given the power of the constable to perform their duties.

This guide list these laws and case laws and should provide a clear understanding of the authority and the duties of a Pennsylvania State Constable

DEFINITIONS

'Police' and LEO are defined in multiple ways in multiple PA STATUTES. There are definitions in PA Statutes that Constables and Sheriffs would clearly not fit into and other definitions that they arguably would. As to current PA Vehicle Code, absent the Roose decision, it would appear that a Constable is a Police Officer. **75 Pa. C.S. § 102.**

Other Definitions:

TITLE 234 RULES OF CRIMINAL PROCEDURE - Rule 103:

- **LAW ENFORCEMENT OFFICER** is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.
- **POLICE OFFICER** is any person who is by law given the power to arrest when acting within the scope of the person's employment.

TITLE 75 CHAPTER 1 § 102. Definitions

- "Police officer." A natural person authorized by law to make arrests for violations of law.

TITLE 37 - LAW, GENERAL PROVISIONS, CHAPTER § 21.1. DEFINITIONS

LAW ENFORCEMENT OFFICER -A sheriff, deputy sheriff, **constable**, **deputy constable**, detective, police officer of this Commonwealth, or any political subdivision, school district, or municipal authority thereof.

TITLE 3 § 459-102. Definitions – PA Dog Law

"Police Officer." is any person employed or *elected* by this Commonwealth, or by any municipality and whose duty it is to preserve peace or to make arrests or to enforce the law. The term includes constables and dog, game, fish and forest wardens.

TITLE 18 - - Chapter 5 - General Principles of Justification § 501. Definitions

"Peace officer." Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term "peace officer" shall also include any member of any park police department of any county of the third class.

**THE HATCH ACT – ELECTIONS
PENNSYLVANIA PUBLIC OFFICIAL AND EMPLOYEE ETHICS ACT 65
Pa.C.S. §1101 et seq.**

Constables, whether seeking election for the first time, or seeking reelection, must follow specific rules of ethics. These are listed in the Hatch Act.

For a constable seeking reelection, some people may complain about you being in uniform. However, for the Constable, it is legal and expected that they may wear their uniform in seeking re-election.

The question on the use of wearing the uniform while seeking reelection has been raised in states around the country. That question has been answered by the U.S. Office of Special Counsel in a case with a sheriff. It states:

The sheriff, as an elected partisan officeholder, is not an “employee.” He falls into a small class of exempt officials that includes the president and vice president of the United States.

“In allowing these elected officials to run as representatives of political parties, Congress presumably anticipated that they would endorse other candidates running under their political party’s banner,” the Special Counsel’s advisory opinion says. *“An elected official’s use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident.” Same for wearing an agency uniform.*

Constables. Like a Sheriff, are elected partisan officeholders.

“Public official.” Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.

TITLE 44, LAW AND JUSTICE – Constables Duties Under Act 49

There has been discussion amongst constables and others concerning a constable's duty to act. Some argue that because a constable has been called an independent contractor, that a constable does not have to act when witnessing a crime. That a constable can just sit back and be a witness. PCCD even instructs this. However, the law is clearly defined that a constable does have a duty to act and must do so. Under Title 44, General impositions, and grant of powers, it states:

§ 7151. General imposition of duties and grant of powers.

Constables shall perform all duties authorized or imposed on them by statute.

What this means, is that if it falls under our authority, we shall (**MUST**) perform that duty. That includes responding to dog and livestock complaints, enforcement of borough ordinances, and making arrest when needed.

You really do not have much choice in the matter. However, because many constables do not do this, boroughs are reluctant to have constables perform the duties for which they are elected.

Recently, the Supreme Court has ruled that the meaning of "shall" now means "may". However, what is written into law is still the law.

AUTHORITY OF A CONSTABLE?

Just how much authority does a constable have? Surprisingly, it is vast. A constables first duty is to provide public safety at the polls during elections. That is the one duty they **MUST** perform. The next duty is a *service of process when the sheriff of the county is a party to that process.*

7153. Service of process.

If no coroner is in commission to serve process in a suit instituted in a court of this Commonwealth in which the sheriff of a county may be a party, a constable in the county where the process has been issued may serve as the coroner and perform the authorized duties of the coroner.

These are the only two duties that a constable must provide, and this is the only reference in the law pertaining to Service of Process. Also, under Act 49, a constable may be called upon to do investigations, they are also charged with the arrest of offenders against forest laws and enforcing laws and ordinances of a borough and may be called upon to investigate claims of trespassing livestock and may enforce dog law.

INVESTIGATIONS

Although it is not common, a constable may do investigations, even though many will tell you that we cannot.

ACT 49 of 2009 § 7157. Returns and appearance.

(b) Appearance. - A court may summon a *Constable* to appear before it and direct the constable to investigate a complaint of a violation of law or of a condition which a constable is required to report to the court and to make a report of his investigation.

Note:

A *County Detective* whose position is to investigate crimes for the DA, is given the power of constable to perform the duties of that position.

Pennsylvania Statutes Title 16 P.S. Counties § 1440. Appointment; duties and compensation of county detectives

(a) In counties of the third and fourth classes, the district attorney may appoint one chief county detective, one assistant county detective and such other county detectives as the salary board may authorize.

(b) In counties of the fifth, sixth, seventh and eighth classes, the district attorney may appoint one chief county detective and such other county detectives as the salary board may authorize.

(c) County detectives shall, at all times, be subject to the orders of the district attorney, and shall investigate and make reports to him as to the conduct in office of magistrates, constables, deputy constables and other officers connected with the administration of criminal law, shall make investigations and endeavor to obtain evidence required by the district attorney in criminal cases, and shall perform such other duties as the district attorney may direct.

(d) County detectives shall be general police officers and shall have the powers conferred on *constables* by the laws of this Commonwealth, so far as they relate to criminal law and procedure.

(e) County detectives of every grade and rank, in addition to their annual salary, shall be allowed their expenses actually and necessarily incurred in the performance of their duties. Such salaries and expenses shall be paid by the county as provided by law. No county detective shall be entitled to any fee whatsoever.

Because the County Detective is performing under the power of a constable in doing investigations, that would affirm that the constable also has those same investigative powers, otherwise the County Detective would not have that power or authority.

It is also noteworthy that under the law, sheriffs in PA have no investigative authority by statute.

Since this clearly provides that a constable may be directed by the court to investigate or if a constable comes upon a situation, to provide to the court the results of any investigation. Then, it would make sense that a constable does in fact have the authority to conduct investigations when needed.

It is the recommendation of this author, that if you do come across something that may need to be investigated at the time or loose the information, that you write up your findings in a report and provide that report to the county detective.

Example: your providing service to a borough enforcing ordinances and come upon an illegal transaction involving suspected drug activity.

ARREST

Under Act 49, constables may make arrest for all violations of the law and enforce the ordinances of the borough.

It States: **Act 49 of 2009 § 7158. Arrest in boroughs.**

In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who:

- (1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.
- (2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.
- (3) Violates any ordinance of the borough for which a fine or penalty is imposed.

In the beginning of this paragraph, you notice it says a constable Shall. What that means in this context is that a constable is **REQUIRED** to enforce these violations of the law when witnessed. This is a DUTY of the Constable.

In addition to the arrest in a borough under Act 49, constables are also responsible for investigating complaints of trespassing livestock and to take the appropriate actions regarding such.

These are the duties that you are required to perform under Act 49, duties that are part of the oath you took when sworn in as constable.

In addition to this, constables may serve the courts with either service of process or serving warrants of arrest, and transport of prisoners.

A constable's authority is also intertwined with that of the police and state police. Using state statutes, we will compare the laws regarding the state police and police in general and how they interact with the authority of constable. Additionally, there is also common law on a constable's authority:

This following report supports Common Law that constables do have statewide criminal authority and is likewise why the Pennsylvania State Police have statewide authority as well.

Report: UPON CONSTABLES OF THE COMMONWEALTH.

Delaware Co CCP (Delaware Co Reports) Feb 7, 1944 In Re Borough High Constables, Powers and Duties of Constables Act - 1927 May 4, 1927 section 1029

Constables are guardians of the peace within their jurisdiction and may apprehend all breakers of the law and bring them before the proper authorities to answer for their conduct.

A constable is more than a township, borough or ward official. His legal acts in civil cases may be performed anywhere in the county and in criminal cases anywhere in the state.

The duties of a constable are of a three-fold nature.

- 1) to enforce the criminal law,
- 2) to serve writs and other process in civil matters,
- 3) to perform the statutory and court duties peculiar to the office.

High constables in boroughs have the power and authority of constables in townships and are entitled to the same emoluments. It is the duty of a borough high constable to enforce the criminal laws and arrest or cause the arrest of all persons engaged in the commission of any unlawful act tending to imperil the personal security or to endanger the property of a citizen or violating any ordinance of the borough.

FIRST RESPONDER STATUS

Health and Safety (35 PA.C.S) – Omnibus Amendments. Act of Jul. 23, 2020, P.L. 670, No. 69

§ 75A01. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Emergency responder." Any of the following:

- (1) A current or former certified emergency medical services provider, current or former member of an emergency medical services agency, fire company or rescue company.

- (2) A peace officer.
- (3) A 911 dispatcher.
- (4) A coroner or medical examiner who responds in an official capacity to an emergency.
- (5) A correction officer.

COMPARABLE AUTHORITY WITH STATE AND LOCAL POLICE

Note: the following law regarding the authority of Pennsylvania State Police.

Pennsylvania Statutes Title 71 P.S. State Government § 252. The Pennsylvania State Police Force (Adm. Code § 712)

The various members of the Pennsylvania State Police are hereby authorized and empowered:

- (a) To make arrests, without warrant, for all violations of the law, including laws regulating the use of the highways, which they may witness, and to serve and execute warrants issued by the proper local authorities. They shall have all the powers and prerogatives conferred by law upon members of the police force of cities of the first class, and upon **CONSTABLES OF THE COMMONWEALTH**.

This is essential taken from 44 Pa.C.S. § 7158. Arrest in boroughs.

Hence, if the State Police are given the powers conferred upon Constables, then constables have that *SAME* power that is exhibited by the State Police. Like that of the County Detective, they are operating under the *constable's authority*, hence the constables have the same authority.

Accordingly, Police also are given the power of constable, as stated in Pennsylvania Code.

PENNSYLVANIA GENERAL ASSEMBLY - Title 11 § 12005. Powers of police officers to arrest.

Police officers shall be *ex-officio constables* of the city and shall enforce the laws of this Commonwealth or otherwise perform the functions of their office in accordance with 42 Pa.C.S. §§ 8952 (relating to primary municipal police jurisdiction) and 8953 (relating to Statewide municipal police jurisdiction) and upon property owned or controlled by the city or by a municipal authority created by the city. A police officer may, without warrant and upon view, arrest and commit for hearing any and all individuals:

- (1) Guilty of:
 - (i) breach of the peace.
 - (ii) vagrancy.
 - (iii) riotous or disorderly conduct; or
 - (iv) drunkenness.
- (2) Engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.
- (3) Violating any of the ordinances of the city for the violation of which a fine or penalty is imposed.

This is identical to the constable's authority, word for word.

See Also:

PENNSYLVANIA STATUTES TITLE 16 P.S. COUNTIES § 4501. EMPLOYMENT OF POLICE

- a) The county commissioners in any county of the second class shall have power to employ such number of police as may be fixed by the salary board of the county. The compensation of such police officers shall be paid by the county.
- b) Such police officers shall have jurisdiction anywhere within the county by which employed, and shall have and possess all the following powers:
 1. To make arrests, without warrant, for all violations of the law which they may witness, and to serve and execute warrants issued by the proper authorities. In cases of offenses for violation of any of the provisions of the Vehicle Code, the power to make arrests without warrant shall be limited to cases where the offense is designated a felony or a misdemeanor, and cases causing or contributing to an accident resulting in injury or death to any person.
 2. The powers and prerogatives conferred by law upon members of the police force of cities of the first class.
 3. **The powers and prerogatives conferred by law upon constables of the Commonwealth.**
 4. To serve subpoenas issued for any examination investigation or trial had pursuant to any law of the Commonwealth.

TITLE 234 PA. CODE 204. - PERSON TO SERVE WARRANT.

A search warrant shall be served by a law enforcement officer.

Comment

No specific person need be designated in the warrant. However, only a law enforcement officer can properly serve a search warrant.

For the requirements when a law enforcement officer executes a search warrant beyond the territorial limits of the officer's primary jurisdiction, see Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953. See also Commonwealth v. Moson, 490 A.2d 421 (Pa. 1985).

ADDITIONAL AUTHORITIES UNDER STATUTE

Here are other laws where a constable is authorized to perform their duty as a law enforcement officer.

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES - TITLE 13 P.S. CONSTABLES

13 P.S. § 40 PEACE OFFICERS; POWERS AND DUTIES

Constables, county detectives, sheriffs, deputy sheriffs, waterways patrolmen and game protectors shall perform all those duties authorized or imposed on them by statute.

16 P.S. § 5180. TRANSPORTATION LICENSE FOR VEHICLES

Purdon's Pennsylvania Statutes and Consolidated Statutes

Title 16 P.S. Counties (Refs & Annos)

Chapter 2. Second Class County Code (Refs & Annos)

Article XXI. Special Powers and Duties of the County

(I) Garbage and Refuse Disposal

It shall be unlawful for any person to transport or cause to be transported any garbage over any public highway in the county in any vehicle unless such person has applied to and received from the county commissioners of the county, as in this act provided, a transportation license in respect of such vehicle. Such license shall be in the possession of the driver of such vehicle at all times when garbage is being transported therein and until such vehicle has been thoroughly flushed out and cleaned after transporting garbage and shall be exhibited to any county or municipal police officer, county road caretaker, **constable**, deputy **constable**, or other peace officer, or officer invested with the powers of a peace officer, upon his request.

2010 PA CODE, TITLE 44 - LAW AND JUSTICE, CHAPTER 53

§ 7159. TRESPASSING LIVESTOCK

(a) In general. --An owner or tenant of an enclosed or unenclosed, improved land in this Commonwealth who discovers trespassing livestock shall notify the constable of the township, borough or ward in which the improved land lies. If the constable of the township, borough or ward is unavailable or unable to assist, the owner or tenant shall notify the constable of the county. The following shall apply:

(1) The constable shall impound the livestock either with the owner or tenant of the land if the owner, and the tenant if one exists, agrees or with another individual or entity that the constable may deem best situated to care for the livestock.

(2) All reasonable costs of keeping the livestock shall be part of the costs of care.

(b) Notification. --The owner of the livestock shall be notified in the following manner:

(1) If the owner is known and resides within the county where the trespass has been committed, the constable shall give written notice to the owner that the livestock has been impounded, the location of the livestock and the name of the owner of the land where the livestock trespassed. Notice shall be given within 24 hours of impounding in accordance with the Pennsylvania Rules of Civil Procedure.

(2) If the owner is known but does not reside in the county where the trespass has been committed, the constable shall give written notice to the owner that the livestock has been impounded, the location of the livestock and the name of the owner of the

land where the livestock trespassed. Notice shall be served within 24 hours of impounding by registered mail.

(c) **Payment.**--If, within four days of receiving notice, the owner of the trespassing livestock pays for the cost of the damage to the land, the costs of care and the fee for the constable, the livestock shall be returned to the owner within three days after receiving payment.

(d) **Refusal.**--If the owner fails to pay the costs and fees within four days, the constable shall notify the magisterial district judge of the county where the trespass was committed. The magisterial district judge shall then direct three disinterested owners of land in the locale where the damage occurred to inspect the trespass, value and appraise the damage. The three shall then consider the appraisal, value and costs of care and make a report to the magisterial district judge within five days.

Cross References. Section 7159 is referred to in section 7159.1 of this title.

1996 ACT 151 PL DOG LAW DEFINITION OF 'POLICE OFFICER' - ...the term includes constables and dog, game, fish and forest wardens. (changed from 'state constabulary') Gov. Ridge, Dec 11,1996.

DOG LAW (3 P.S. § 459-101 ET SEQ.),

Constables are considered "police officers" who can enforce that law. The Dog Law specifically includes "constables" within the definition of the term "police officer" (at 3 P.S. § 459-102) and empowers police officers (including constables) with authority to "file violations for criminal prosecution" (at 3 P.S. § 459-901(a)) in the enforcement of that law.

WRITING CITATIONS, THE AUTHORITY TO DO SO

By Statute, constables can enforce any violation of the law and ordinances of the borough, this enforcement can be done by writing citations and the defendant having to appear in front of the local Magistrate.

Many people, including constables, other law enforcement and the general public have the misconception that constables cannot write citations. However, there are many positions that require the writing of a citation to enforce a law or ordinance. It depends on the position of the person and authority in writing the citations may be limited.

UNDER THE RULES OF CRIMINAL PROCEDURE, RULE 103. the following definitions apply to constables.

1. **LAW ENFORCEMENT OFFICER** is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.
2. **POLICE OFFICER** is any person who is by law given the power to arrest when acting within the scope of the person's employment.

As a Constable, you have the power to make both warrant and warrantless arrest and you have the authority to enforce the laws and ordinances of a borough. Constables fall under both definitions.

The authorization to write the citations is in: Pennsylvania Code (Last Updated: April 5, 2016)

PENNSYLVANIA RULES OF CRIMINAL PROCEDURE, 234 PA. CODE, RULE 402. – PERSONS WHO SHALL USE CITATIONS.

Law enforcement officers shall ordinarily institute summary proceedings by citation.

Comment

It is intended that a wide variety of officials will have the authority to issue citations and shall do so as provided in these rules. Such authority is, of course, limited by the extent of the enforcement power given by law to such officials. "Law enforcement officer" includes "police officer." See Rule 103.

Prior to a constable issuing any citations, it is recommended that the constable receive some guidance and instructions in both how to write them, how to argue them in court and understand the ordinances you are enforcing.

PROCEDURES WHEN CITATION FILED - RULE 410. FILING OF CITATION.

When it is not feasible to issue the citation to the defendant or when evidence is discovered after the issuance of a citation that gives rise to additional summary charges against the defendant resulting from the same incident, a law enforcement officer shall institute a criminal proceeding in a summary case by filing a citation with the proper issuing authority.

As you see, constables who have By Law, full warrant and warrantless arrest authority, fall under these definitions.

SEE ALSO:

PA Supreme Court Decision regarding writing citations @ **781 A.2d 168 Pa Super. 2001**

TRAFFIC LAWS, HISTORY AND CASE LAW

TITLE 75 §3102 -Obedience to authorized persons directing traffic.

Under this statute, Constables may direct traffic when required.

No person shall willfully fail or refuse to comply with any lawful order or direction of any uniformed police officer, sheriff or *Constable* or, in an emergency, a railroad or street railway police officer; or any appropriately attired person, including an agent or employee of the funeral director during a funeral, authorized to direct, control or regulate traffic or an employee who has been trained in traffic control by a licensed and insured private security company and who is acting in the scope of employment.

TRAFFIC LAWS REGARDING CONSTABLES, HISTORY

There is current debate on a constable's authority to enforce traffic laws. Constables did enforce prior vehicle codes from the very first vehicle laws passed by the General Assembly. There is current case law on the matter in enforcing traffic violations as a breach of peace. The Following laws were found in Purdon's Pennsylvania Statutes and Consolidated Statutes from 1705 to 2009

General Assembly, 1903 Act 202 PL 268 Whereas, it is of the utmost importance to the rights of the people of this Commonwealth that the public highways of cities, boroughs, counties and townships of this Commonwealth should be as free as practicable from the reckless use of dangerous motor vehicles...**Section 9.** Every person so licensed shall carry with him, when using or operating such motor vehicle upon the public highways, and when so requested by any constable or police officer of the Commonwealth shall produce the same and the certificate of registration for inspection. **Section 10.** It shall be the duty of the constables and police officers of the cities, boroughs, and townships of this Commonwealth to arrest, upon view and without a warrant, any person violating any provisions of this ACT... Gov. Pennypacker, April 23, 1903.

1919 Act 283 PL 678 Vehicle Code Section 31. Constables and Police Officers - Constables and police officers of the State, and of the cities, boroughs, incorporated towns, townships, and counties of this Commonwealth, may arrest, upon view, any person or persons violating any provisions of this act, and such officers shall forthwith make and file with the mayor, burgess, magistrate, alderman, or justice of the peace, before whom such person arrested is taken, an affidavit setting forth in detail the offenses complained of, and at once furnish a copy thereof to the person arrested. Gov. Sproul, June 30, 1919

1923 Act PL 718 Section 26 ... Any constable or police officer or member of the State Police Force or designated officer of the State Highway Department, who shall be in

uniform or shall exhibit his badge or other sign of authority, shall have the right to stop any motor vehicle, upon request or signal, for the purpose of inspecting the said motor vehicle as to its equipment or operation, or manufacture's number or motor number or weight, and securing such other information as may be necessary. Gov. Pinchot, June 14, 1923, see also Opinions of the Attorney General - May 23, 1925.

1927 Act 275 PL 421 Section 26. The operator of any motor vehicle shall stop upon request or signal of any constable, police officer, or member of the State Police Force...No such constable, police officer, or member of the State Police Force, or other person shall request or signal the operator of a motor vehicle to stop, for the purpose of selling tickets for charitable or other purposes, or for any form of solicitation whatever. Gov. Fisher, April 27, 1927.

1951 Act 558 PL 1996 Vehicle Code - 'Peace officer' - A sheriff, deputy sheriff, constable, member of the PSP, state highway patrolman, or other police officer vested with authority of arrest. Gov. Fine, January 14, 1952.

1959 Act 32 PL 58 Vehicle Code 'Peace Officer' - A sheriff, deputy sheriff, constable, member of the PSP, state highway patrolman, or other police officer, vested with authority of arrest, and such officers and soldiers...

Section 1204. Arrests on View or With Warrant - Peace officers, when in uniform and displaying a badge or other sign of authority, may arrest, upon view, any person violating any provisions of this act, where the offense is designated a felony or misdemeanor, or in cases causing or contributing to an accident resulting in injury or death to any person... Gov. Lawrence, April 29, 1959

CURRENT CASE LAW REGARDING CONSTABLE'S ENFORCEMENT OF TRAFFIC VIOLATIONS

COMMONWEALTH v. ALLEN, No. 1203 MDA 2018

FILED MARCH 22, 2019

In light of this Court's understanding of what constitutes a breach of the peace for purposes of reviewing deputy sheriffs' authority to conduct a Fourth Amendment stop, it is clear that the patently disruptive, intrusive, and dangerous nature of appellant's underlying conduct clearly aligns with the "breach of the peace" concept in this context.

Confronted with such conduct, the constables here acted within their common law powers when they walked to the driver's side window, detained an ostensibly compromised Appellant in a safe manner, and immediately called the proper authorities to investigate the incident.

Accordingly, we conclude there is no merit to Appellant's argument that his detention at the hands of Constables Metcalf and Gates until the Pennsylvania State Police arrived amounted to a violation of his Fourth Amendment rights requiring suppression of all DUI evidence subsequently obtained.

Judgment of sentence affirmed.

In view of relevant jurisprudence, we discern no basis for applying a different scope to the concept of "breach of the peace" depending on whether a sheriff's, a deputy's, a constable's, or a private citizen's authority to affect a stop or arrest is under review.

REVIEW

We have reviewed a constable's authority, the definitions for police officer and constable, their arrest ability and investigation authority. We have also reviewed a constable's traffic authority with both past ACTs and current case law.

Now, we go back to an ACT of 1879. This is important because it establishes a constable's arrest and investigative authority stretching back to then. This Act covers Cruelty to Children. We will also look at Penal Code of 1939, Animal Cruelty authority.

CONSTABLES - CHILDREN AND ANIMAL CRUELTY AUTHORITY

In matters **1879 Act 117 PL 125** dealing with cruelty to children and employment of children... Section 6. ... such justice or magistrate shall forthwith issue a warrant to a constable or other authorized officer, to enter such place or house and investigate the same; and such person may arrest or cause to be arrested all offenders, and bring them before any justice, magistrate, or court of record for a hearing of the case; and it shall be the duty of all constables and policemen to aid in bring all such offender before said authorities for a hearing.

Section 8. ... humane society (Note: Humane Societies at this time were for woman and children) may offer similarly qualified persons to the court of common pleas of the county, whereupon such court or any judge thereof shall, if they be fit persons, commission such person to act as constables, with power to arrest all offenders against this act or any provisions thereof... all persons thus qualified under this section, shall be deemed to be constables and authorized persons within the meaning of section 6 of this act; and the keepers of jails or lock ups, or station houses, in any of said counties, are required to receive all persons arrested by such policemen or constable. Gov. Hoyt, June 11, 1879.

Note: This Act further establishes the history of the constable's ability to investigate suspected criminal activity.

Constable Animal cruelty authority of 1939. This is still pertinent today regarding Animal Cruelty.

Dec. 6, 1972, the Penal Code of 1939. Act 375 PL 872 Penal Code

Section 948. Power to make arrests in cruelty to animal cases - Any policeman or *Constable*, or any agent of any society...shall, upon his own view of any offense against sections 942-947 (cruelty to animals), of this act, make an arrest, and bring before a magistrate the offender found violating such provisions, and any policeman or constable, or any agent of any society, as aforesaid, shall also make arrests of such offenders on warrants duly issued according to law, when such offense is not committed in view of said officer, constable or agent. Gov. James, June 24, 1939.

Note: After the conversion from Penal Code to Crimes code, it generalizes police. However, by statute, constables shall enforce Breaches of the Peace (Disorderly Conduct). Under Title 18, Chapter 55, Disorderly Conduct, Animal Cruelty is listed as a related offense.

POWER TO INITIATE CRIMINAL PROCEEDINGS

An agent of a society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have the same powers to initiate criminal proceedings provided for police officers by the Pennsylvania Rules of Criminal Procedure. An agent of a society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have standing to request a court of competent jurisdiction to enjoin a violation of this subchapter.

Credits: 2017, June 28, P.L.215, No. 10, § 4, effective in 60 days [Aug. 28, 2017].

IMPORTANT CASE LAWS

Not all laws are granted through the legislature, some are cases that have gone through the courts and those actions have been found legal to do. This is called case law. The following case laws affirm a constable's authority and legality of Police and Peace Officer Status.

ABBOTT V. LATSHAW

US 3rd CIRCUIT COURT OF APPEALS – CONSTABLES ARE CONSIDERED “STATE ACTORS” AND “LAW ENFORCEMENT OFFICERS.”

In United States law, a **state actor** is a person who is acting on behalf of a governmental body, and is therefore subject to regulation under the United States Bill of Rights, including the First, Fifth, and Fourteenth Amendments, which prohibit the federal and state governments from violating certain rights and freedoms.

A CONSTABLE IS A POLICE OFFICER

The court of appeals in County of **Allegheny v. Berg**, 219 F.3d 261 (3d Cir. 2000), and **Abbott v. Latshaw**, 164 F.3d 141 (3d Cir. 1998), and the district court in **Maloney v. City of Reading**, 04-cv-5318, 2006 WL 305440 (E.D. Pa. Feb. 8, 2006), treated constables as police officers for purpose of § 1983 claims. Finally, Pennsylvania Rule of Criminal Procedure 103 defines a police officer as "*any person who is by law given the power to arrest when acting within the scope of the person's employment.*" *Pa. R. Crim. P. 103.*

The court concludes that in the context of those cases a constable is a police officer.

SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA V. ROBERT P. ROOSE,
APPELLANT. Decided: February 13, 1997

In a decision under this case, the court stated: While the holding of In re Act 147 did not deal specifically with the constables' arrest powers, it provided a telling description of a constable's functions. In particular, the court expressly recognized that "a constable is a peace officer."² *Id.* at 470, 598 A.2d at 990. The court further stated: *A constable is a known officer charged with conservation of the peace, and whose business it is to arrest those who have violated it.* Commonwealth v. Deacon, 8 Serg. & R. 47, 49 (1822). *By statute in Pennsylvania, a constable may also serve process in some instances.* See generally, 13 P.S. §§ 41-46. *As a peace officer, and as a process server, a constable belongs analytically to the executive branch of government, even though his job is obviously related to the courts. (It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally).* In re Act 147, 528 Pa. at 470, 598 A.2d at 990 (emphasis added).

ARREST FOR POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER

PA Superior Court Decision- Constable's authority to affect Warrantless arrests for breach of the peace, determined that Constables have the authority to make arrests for possession of a controlled substance with intent to deliver.

Commonwealth V. Taylor - 450 PA. Super. 583, 677 A. 2d 846 (1996)

We have just reviewed cases defining a constable's authority, their ability by law to enforce the law in comparison to that of the police and state police. What is different is the training received.

Training, Pennsylvania Commission of Crime and Delinquency

The Training provided by PCCD is limited in its scope. Constables receive training in serving the District Courts, Warrants and Service of Process for the Courts. They receive instruction in criminal and civil law, arrest, and firearms certification.

However, a constables duty includes more than just service to the courts. Therefor any constable who wishes to conduct themselves as the office allows, is encouraged to attain additional training. PCCD only has the responsibility of certifying and training constables for service to the Magistrate District Courts.

It is advised that constables receive training in:

- a. Writing citations
- b. Ordinance Enforcement
- c. Humane Law & Dog law
- d. First Aid, CPR and AED.
- e. Traffic control
- f. Securing an accident scene
- g. Securing a crime scene
- h. Investigations

As constables, many times we are the first to pull up to an accident that has taken place or discover a crime has taken place while in the performance of our duties. As a law enforcement officer, you have a duty upon these discoveries.

Under the law, constables may be required to investigate trespassing livestock, it is advised that constables who may have to deal with these issues receive guidance from a constable or another person experienced with large farm animals.

Also, Taser certification is not required but is recommended.

INDEPENDENT CONTRACTOR STATUS, THE FEE BILL

There are constables who argue that if it is not on the fee bill, it cannot be done. They state this due to the classification that constables are Independent Contractors with limited training by the state. However, they forget that Constables are also classified as State Actors. We represent the State when we are fulfilling the role of Constable.

Yes, constables are classified as independent contractors, but this is just to receive compensation for our services. Unlike other law enforcement, who receive a salary from the borough, county, or state, we must contract ourselves out for work. We are paid only when the service is done. Although we may be paid by the courts, we are paid indirectly by the defendant or whomever we contract with.

How we are paid has nothing to do with our responsibilities as a constable.

As stated in the beginning of this guide, a Constable is a Public Official, we are elected by the citizens to a public office, the same as any other elected public official.

By case law, Constables are also classified as State Actors, in other words, the courts have stated that we **DO** represent the **State**.

As Constables, either elected or appointed to the position, there are specific duties we must perform under the law. Again, the independent contractor status comes from the fact that as constables, we are NOT supported by tax dollars. It has no bearing in your responsibilities as a Public Official / Peace Officer.

Remember, PCCD only trains you to serve the courts. You must attain any further training and certification on your own.

Your duties and responsibilities are engraved in law. They must still be provided for according to law.

There is a lot more to constables than just serving for the MDJ Courts.

A CONSTABLES EMERGENCY PREPARDNESS

There are times when as a constable, you will come upon a situation, where you as a constable, will have no choice but to act. At that time, you are the authority till relieved.

Case in point; you are at an intersection and there is a head on collision directly in front of you. What is your response.

First, if you have emergency lights, activate them, if not, activate your flashers to warn others and protect the scene.

Second, respond to the victims, calling in the accident to the comm center, if there are injuries, transmit that information to EMS.

Third, once the victims are secure if no injuries, secure the scene and direct traffic as needed.

Forth, provide as much information as you can to the responding police.

Recommended equipment for your vehicle:

- a) First aid kit
- b) Blankets
- c) Collapsible cones with strobe lights
- d) Rope, about 100 ft.
- e) Sharp knife
- f) Emergency food and water
- g) Rubber boots, rain gear
- h) Reflective vest
- i) Several pet leashes and a catch pole. (You may have an accident scene where a family pet is in the car.) Might consider having a large net to. Can be thrown over an animal.

This is just one Scenario where you come upon an accident. However, there are other more serious scenarios. Natural and man-made disasters, floods, fires, terrorist activity and Global Unrest. As a Constable, you have a Duty to enforce the law and uphold the constitution. You have a duty to your community.

Be The Constable!

**INTERNAL AFFAIRS
REPORT
ON CONSTABLES**

POWERS AND DUTIES OF
CONSTABLES IN PENNSYLVANIA

By Kathleen A. Loos
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Bureau of Municipal Affairs

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Loos, Kathleen A.

Powers and duties of
constables in Pennsylvania

CONSTABLES IN PENNSYLVANIA

Their Powers and Duties

BY KATHLEEN A. LOOS

First of a Series

THE OFFICE OF CONSTABLE predates the birth of the Commonwealth by many hundreds of years. Not much has been written defining the office as it exists in Pennsylvania today. This article is mainly concerned with the manner in which constables are to discharge the obligations of their office. It is intended only as an outline of the requirements for election to the office, the duties and responsibilities connected with the office, and the various civil and criminal proceedings to be used and not as an authoritative legal guide. A glossary of terms is included, as are sample forms with which constables might wish to become familiar.

History Of The Office. According to **Bouvier's Law Dictionary**, the term constable is derived from the French word "comestable," (count of the stable) who was an officer second only to the king. He was authorized to take charge of the army whenever the king was not

present and had charge of military matters such as marching the troops, their encampment, and provisioning.

In England, it appears that the office was of Norman origin and the primary duty was that of keeping the king's peace. In addition, constables were to serve warrants and perform other judicial duties, such as apprehending criminals and preventing crimes.

The office of constable in Pennsylvania may be traced to the English office of constable. This institution, along with many other present practices in Pennsylvania, were brought to this country by the early English settlers. Except for a year of Dutch rule, the area which became Pennsylvania operated under the Duke of York's Laws from 1664 to 1681. These laws provided for the first constables who managed the affairs of the towns or parishes, the principal unit of government during the 1600's. During this period constables also appraised property, collected taxes, and served on the town court. Constables have remained preservers of the peace

throughout the Commonwealth's history. The principal purpose of the office has been to provide for a peace officer within easy reach of every citizen.

Election Requirements. Constables serve for a six-year term in all municipalities in the Commonwealth. In second class, second class A and third class cities constables are elected one for each ward. This is also the case in boroughs that are divided into wards. In those boroughs not divided into wards and in first and second class townships, one constable is elected. In first class townships an additional constable may be elected.

Philadelphia elects 122 constables who serve as executive officers of the Magistrates' Courts. Constables in Philadelphia are elected by wards; three each from the 22nd and 27th wards and two from each of the other wards. The term of office is also for six years. Each of the Philadelphia Magistrates' Courts has at least one constable attached to it to serve processes and perform other judicial duties. Some constables not attached to a court concern themselves mainly with landlord and tenant matters, collecting rents and attending to distraints and dispossession proceedings.

In order to be placed on the ballot for election, an applicant for the office of constable must file a petition, signed by ten qualified electors of the district in which he is to be elected, with the Board of County Elections. This petition must be filed at least 44 days prior to the day on which the primary election is to be held.

Constables are required to appear before the term of the court of quarter sessions held immediately after their election to accept or decline the office. In cities and bor-

oughs there is a penalty of \$16.00, to be paid to the Commonwealth by court order, if a constable-elect fails to appear before the court of quarter sessions. In townships this penalty is \$40.00. The person elected as constable would not be liable for the penalty if he obtains a deputy to assume the duties or if, during the 15 years previous to his election he has either served as a deputy or paid the penalty for some previous election to the post of constable.

Bond Required. Before any constable may discharge his duties and obligations, bond must be given of not less than \$500.00 or more than \$3,000, as the court directs. This bond is given to the clerk of the court in the name of the Commonwealth of Pennsylvania and protects an individual who might be injured by a constable's neglect or by an illegal act he performed. For example, if a constable collects money on a landlord's warrant and does not pay it over, the sureties are liable on the bond. If a constable obtains money from the county by false pretense, the sureties are also liable. However, any illegal act committed by a constable not connected with his duties would not be covered by his bond.

Any constable who owns real estate in his own name, clear of all encumbrances, and worth at least \$1,000 is not required to file bond with the court.

Filling Vacancy in Office. Law provides that when a vacancy occurs in the office of constable in any borough, town or township for any reason, such as the failure to elect a constable or his failure to qualify, his incompetency, his death, his resignation, or his removal for any cause, the court of quarter sessions, upon petition, may appoint a suitable person to serve as constable

for the unexpired term. The courts have ruled that a vacancy does not exist in the office of constable if no proceedings have been initiated to remove the constable.

Appointment Of Deputy. The constable has the authority to appoint a deputy subject to approval by the court of quarter sessions. Any appointed deputy must reside in the same district as the constable who deputizes him and the deputy constables' authority is terminated if he moves from the district.

In Philadelphia, a deputy constable must be a resident and qualified elector of the ward in which the constable was elected, and if he ceases to be a resident of the district the court is required to revoke his appointment, upon petition and proof of his removal. Law does not provide for a separate office of

deputy constable. If a vacancy occurs in the office of the regularly elected constable, the deputy's appointment is also terminated.

Special circumstances must exist before a deputy constable may be appointed. Such circumstances would include the regular constable's inability to attend to the duties of his office himself, or a volume of business sufficient to warrant additional personnel.

Any constable who appoints a deputy must file a certification of such appointment with the clerk of the court of quarter sessions and receive approval of the appointment. Illustrated below is a sample form for this.

In Re:
Appointment of
Deputy Constable

In the Court of Quarter
Sessions of _____
County, Pennsylvania.

_____, 1965

KNOW ALL MEN BY THESE PRESENTS that I _____
constable of the township of _____ in said County,
subject to the approval of the court, do hereby nominate, constitute and
appoint, _____ of said township
as my deputy to serve writs, execute processes, and act in my place and
on my behalf generally in all matters relating to the duties of my office,
until the expiration of my term or the revocation of this appointment.

Constable

By the Court,

President Judge

NOW _____, 1965,
the above appointment approved.

A certification of appointment must also be filed if a vacancy occurs in the office of deputy constable.

The court of quarter sessions is responsible for the removal of any constable from his office, due to incompetence or neglect of duty.

Compatible And Incompatible Offices. Constables may not serve as aldermen or justices of the peace, township or borough auditors, school directors, district attorneys or as officers of the executive, legislative or judiciary departments of

the United States, except for military service.

Constables may serve as borough policemen and may receive all costs and fees to which he is entitled as constable, except that those costs and fees derived from borough ordinance violations are to be collected by the borough mayor and paid into the borough treasury.

There is no provision in the laws governing Philadelphia permitting constables to serve as policemen, however, nothing would seem to prohibit this.

In Pittsburgh and Scranton (second class and second class A cities respectively), the law is also silent concerning the question of a constable serving as a policeman. Second class city law does provide that all city employes are to receive a fixed salary, which would seem to be in conflict with the fee system of the office of constable. However, in a lower court case, *City of Pittsburgh v. Edwards*, 58 Pitts. 102, 1909, it was held that the second class city provision of fixed salaries does not apply to fees collected for services performed under other state statutes. Thus, it would appear that constables serving in Pittsburgh and Scranton could also be policemen and receive their fees.

Third class city law specifically prohibits a constable being appointed as a policeman.

In first class townships a constable may be appointed a policeman, however, he may not receive compensation for his duties as a policeman.

Second class township law provides that a policeman is an ex officio constable. He would not be entitled, however, to the fees of the constable except for the allowable traveling expenses. But, in most

second class townships the elected constable performs all police functions and this compensation problem is thereby eliminated.

The Fee System. Constables are compensated by the fee system. The fees that are to be charged for the major duties of constables are found in the Constables Fee Bill (Act of 1917, P. L. 1158, as amended). The following list indicates fees charged in criminal and civil actions. Certain miscellaneous fees are also included.

FEES CHARGED BY CONSTABLES IN PENNSYLVANIA

Fee Bill Act

For executing a warrant on behalf of the Commonwealth, for each defendant. ----- \$2.50

For conveying defendants, except vagrants, to jail on mittimus or warrant, for each defendant. ----- 2.50

For each mile going and returning. ----- .10

For arresting persons guilty of a breach of peace, riotous or disorderly conduct, drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinance of any borough for the violation of which a fine or penalty is imposed, or offending or suspected of offending against the laws of this Commonwealth, protecting timberlands, or the violation of any other law of this Commonwealth authorizing arrest by constable without process, and bringing such offender before a justice of the peace, for each defendant. ----- 1.00

For every act in or about the arrest or commitment of vagrants, for each vagrant so arrested and committed. 2.50

For levying a fine or forfeiture on a warrant. 50

For taking a defendant into custody on a mittimus, entered before delivery of the defendant to the jailer. 2.50

For executing discharge to jailer. 2.50

For executing bail piece. 2.50

For executing a search-warrant, and making return thereon. 1.00

For making returns to the court of quarter sessions 2.50

For serving summons, notices or referees, suitor or tenant, either personally or by leaving copy, for each person served. 2.50

For serving subpoena, for the first witness. 1.50

For each additional witness served. 75

For executing attachment for each defendant and garnishee served. 1.50

For arresting on a capias, for each person arrested. 1.00

For taking bail on a capias, or for delivery of goods. 50

For notifying plaintiff where defendant has been arrested on capias, to be paid by the plaintiff 25

For serving capias execution. 2.50

For executing landlord's warrant. 3.00

For taking inventory of goods, each item.02

For levying or distraining goods 3.50

For advertising personal property to public sale. 2.50

For selling goods levied or distrained and when the same continues longer than three hours 5.00 per day

For clerk hire at goods sales, when necessary 5.00 per day

For watchmen taking charge of property levied on, when necessary. Also reasonable expenses of insurance, arranging goods for sale, heat, light, storage, rent, transportation, feeding live-stock, and similar expenses incurred in caring for and keeping goods and chattels levied upon, when the same is necessary and advantageous, or when requested by the plaintiff or defendant to incur such expense. 5.00 per day

For receiving and paying over money paid after a levy, without sale. 1.50

For copy of vendue paper, when demanded, each item. .02

For putting up notice of distress at mansion-house, or at any other place on the premises. 50

For serving scire facias, either personally or by leaving a copy for each person served, for the first copy. 2.50

For each additional copy. 75

For executing order of removal of a pauper, for each pauper 2.00

For making return of nulla bona or non est inventus or any writ. 1.50

For executing writ of restitution. ----- 5.00
 For executing writ of possession ----- 5.00
 For serving summons in landlord and tenant proceedings 2.50
 For taking inventory of goods on execution, each item. -- .02
 For holding appraisal where exemption is claimed by defendant (out of where the constable shall pay to each appraiser \$1.00). ----- 4.00
 For traveling expenses in the performance of any other duty or service required by law, each mile going and returning (To be computed by the route usually traveled in going from points and places where the constable may reside, or where he receives any paper to be executed, to the points or places required to be traveled, whether that route be by highways, railroads, or otherwise).10

Miscellaneous Fees

Dogs

Seizing and detaining unclaimed dogs. Destroying unclaimed dog. (Both ears to be sent to the Department of Agriculture). ----- 2.00

Elections

Preserving peace at elections not less than ----- 5.00
 (fee to be fixed and paid by the county commissioners of each county). Not more than 10.00
 For serving notices of their election upon township or borough officers. ----- .15

Executions

For serving executions. -- .50
 Sales on judgments on affidavits of claim: sales amounting to less than \$50.00 ----- 3%
 Sales less than \$100.00 --- 2%
 Sales above \$100.00 ----- 1%

Juvenile Court

Delivery of arrested juvenile under sixteen years to juvenile court. (In addition \$.03 per mile actually traveled and \$.03 per mile for transportation of each juvenile and necessary expenses). ----- .75

Liquor Regulations

Delivery of persons in soldiers encampment or reunion guilty of disorderly or riotous behavior, breach of peace or intoxication before justices' court, for each day in attendance in encampment to be paid by county ----- 3.00

Paupers

Executing an order of relief of a pauper (for each mile traveled \$.06). ----- .75

Quarantine Districts

Seizing any animal, except dogs running at large in quarantine districts, each animal. --- 1.00

Stray Animals

Impounding animal, each animal. ----- 1.00
 Selling impounded animals each animal (In no one case may the fee for impounding and selling amount to more than \$4.00). ----- 2.00

Constables are the executives and field officers of the justices' courts and are expected to be aware of the happenings in their districts. They have the same authority, duties, and responsibilities as sheriffs, that is to maintain the local peace, to arrest violators of the statutory or common criminal code, and to serve writs under the civil code.

Justices function in their offices and court rooms and constables function in the field. In this respect constables do not have concurrent jurisdiction in any matters with which justices are concerned.

Constables In Pennsylvania—Glossary

Action of Damages

To recover a pecuniary compensation or an indemnity, which may be recovered in court by any person who has suffered loss, detriment, or injury whether to his person, property, or rights through the unlawful act or negligence of another.

Bail Piece

A certificate issued by a judge or other court officer authorized to keep records. The certificate must contain the fact that the bail is in a certain sum and in a particular case.

Capias

The general name for several kinds of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody; they are writs of attachment or arrest.

Dispossession Proceedings

Summary process by a landlord to oust the tenant and regain possession of the premises for nonpayment of rent or other breach of the conditions of the lease.

Distrain

Seizure; act of making a distress.

Distress

Seizure and detention of the goods of another as security to obtain satisfaction of a

claim, as for rent, taxes, or an injury, by sale of the goods seized.

Encumbrance

A claim, lien, charge, or liability attached to and binding real property.

Execution

Carrying some act or course of conduct to its completion.

Garnishee

A person who has money or property in his possession belonging to a defendant. He is warned to keep the money or property in his hands and not to deliver it to the defendant until the result of the suit is ascertained.

Mittimus

The name of an order in writing, issued by a court or magistrate directed to a sheriff, constable, or other officer commanding him to convey the person named to prison.

Non Est Inventus

"He is not found"; the constables return to a writ requiring him to arrest the defendant when the latter is not found within his jurisdiction.

Nulla Bona

"No goods"; the name of the return made by the constable for a writ of execution when he has not found any goods of the defendant within his jurisdiction which he could seize.

On View

An offense may take place within view of an officer so as to authorize arrest without a warrant when the officer has knowledge that an offense is being committed.

Precept

An order, emanating from an authority, to an officer commanding him to do some act within the scope of his powers.

Principal

A person who is competent in his own right to do a particular act for his own benefit and who contracts with another person to do the particular act for him.

Process

The means of compelling the defendant in an action to appear before the court.

Referees

A person to whom a cause pending in a court, is referred, by the court, to take testimony, hear the parties, and report thereon to the court.

Scire Facias

A judicial writ, founded upon some matter of record, such as a judgment or recognizance, and requiring the person against whom it is brought to show cause why the person bringing it should not have the advantage of such record.

Warrant

A writ issued by a magistrate, justice, or other authority addressed to a sheriff, constable or other officer, requiring him to arrest the person named therein and bring him before the court to answer for some offense which he is charged with having committed.

Writ

A mandatory precept issued from court or magistrate.

Writ of Habeas Corpus

A writ directed to the person detaining another, which commands him to produce the body of the prisoner or person detained and to do whatsoever the judge or court directs.

Writ of Possession

A writ of execution employed to enforce a judgment to recover the possession of land. It commands the constable to enter the land and give possession of it to the person entitled to it under the judgment.

Writ of Restitution

A writ which is issued on the reversal of a judgment, commanding the constable to restore to the defendant the thing seized if it has not been sold, and if it has been sold, the proceeds; a writ which lies, after the reversal of a judgment, to restore to a party all that he has lost by the occasion of the judgment.

Constables In Pennsylvania

Criminal Duties and Responsibilities; Execution of Processes

Second in a Series

By KATHLEEN A. LOOS

IT IS THE CONSTABLE'S DUTY to execute processes which require the arrest or restraint of persons charged or convicted of any offense. If the constable permits an individual to escape because of his failure to execute a process, he may be imprisoned for a period not to exceed two years or pay a fine not to exceed \$1,000 or both.

Weeds. Constables are required to notify the owner of lands for which Canada Thistles, chicory or marihuana are growing, to cut and destroy the weeds. If such an owner fails to destroy the weeds within five days of notice, the constable shall cause the weeds to be cut down. The constable is entitled to employ persons and machinery to help destroy the weeds, and the constable and any helpers are to collect from the owner of the land the costs of the labor, with a fee of \$.50 plus \$.06 a mile circular for doing the work.

Labor Laws. It is the duty of the constable, when issued a warrant, to investigate and arrest any person

violating the laws which govern the employment of children.

Complaints to the Court of Quarter Sessions. Whenever complaints are made to the court of quarter sessions for violation of law or conditions which under the law the constable of the district is required to report to the court, the court may summon the constable to appear before it and direct him to make a report of the investigations.

Cruelty to Animals. Constables are required to arrest upon view any person violating the cruelty to animal laws.

Dance Halls. All public dance halls, ballrooms and academies in townships are subject to inspection by the constables. Constables have the authority to close a place where a public dance is being held if violation of provisions of law or ordinances governing dances or if disorder takes place.

Boroughs have their own laws concerning the regulation of dance halls and are therefore not subject to the foregoing provisions.

Disorderly Conduct and Regulation of Sale of Liquor. Upon written application by the commandant of any encampment or reunion of soldiers, the constable shall arrest on view any person guilty of disorderly conduct, riotous behavior, breach of peace, or intoxication. Such persons arrested are to be taken to any justice of the peace of the county for hearing.

Dogs Running at Large. Constables are authorized to seize any dog which might be running at large and dispose of the dog if it has no license. If the dog has a license the constable shall keep and feed the dog and notify the owner who shall pay for the keeping and feeding.

Election Duties. It is the constable's duty to maintain order around the election polls on election day and to keep a clear path to enter the polls. Failure to do so carries a fine of \$500.00 or imprisonment of not less than three months nor more than two years, or both.

Fireworks and Combustibles. Constables are authorized to seize and remove at the expense of the owner, all stock of fireworks or combustibles offered for sale or stored in violation of the fireworks laws.

Fish Laws. Constables are directed to enforce the fish laws by destroying illegal fishing devices and making arrests on Sunday. If the constable refuses or neglects to enforce the fish laws he may be fined \$50.00.

Also, it is the duty of the constable to seize oysters and rockfish offered for sale between the 10th of May and the 1st of September in any year.

Constables are further directed to seize illegal nets and devices used and arrest persons violating the provisions of law governing the catching of tadpoles, bullfrogs and terrapins.

Habeas Corpus. It is the constable's duty to execute any writ of habeas corpus which is given to him. Failure to execute such a writ subjects the constable to a fine of 100 pounds* and forfeiture of his office.

Violation of Ordinances. Constables in Philadelphia are authorized to arrest on view any person who violates any ordinance. Such offender may be taken directly to a magistrate for hearing.

Constables in boroughs are authorized to arrest on view any persons guilty of a breach of peace, riotous or disorderly conduct, drunkenness, commission of any unlawful act which would imperil the personal security or endanger the property of citizens or violation of any borough ordinance, for which a fine or penalty is imposed. All actions and proceedings on borough ordinances commenced by complaint and information require issuance of a warrant, which either a policeman or constable of the borough is required to serve.

Pollution. Constables are empowered to arrest, on view, any person who enters upon enclosed land which contains a dam, reservoir, pond, or other artificial means for storing water used by the public for drinking purposes, and attempts to pollute or pollutes the water.

*The Congress of the United States adopted the dollar on April 2, 1792. The law which sets forth this penalty was passed by the Pennsylvania General Assembly on February 18, 1785 and has never been repealed. It is not known how the 100 pounds would be converted to adjust to the present U. S. dollar rate.

Trespassing on Railroad Property. Constables shall on notice or on view arrest any person trespassing on a railroad engine or car or on any railroad contrary to the rules of the railroad owners. It is also his duty to arrest any person attempting to ride without paying a fare, committing larceny, violence or destroying property, threatening passengers or other persons on the train. The constable shall take any such offender of these provisions to a justice of the peace for prosecution.

Renovated Butter. Constables are required to make returns in their quarterly report to the court of quarter sessions the name of any person violating the laws concerning renovated butter. The report must include the names of any witnesses.

Trees and Shrubs. It is the constable's responsibility to arrest without a warrant any person who cuts down, injures, destroys or removes any trees or shrubs from any forest reserve of the Commonwealth.

The constable also has authority to arrest any person on view who trespasses on state forest or timber land and against whom there is reasonable suspicion that a violation against the forest and timber laws has been committed.

Vagrants. Upon notice by any citizen or on view, any vagrant or person found loitering shall be apprehended by the constable and taken before a justice of the peace to be examined for vagrancy.

Certificate Stating Offense. It is the duty of the constable after he performs an arrest to issue a certificate to an accused which states his name, the charge on which he has been arrested and the amount of bail demanded, if any. This certifi-

cate is to be issued without cost upon demand by the accused or anyone on his behalf. Failure to issue such a certificate subjects the constable to a fine of \$500.00 or imprisonment not exceeding one year, or both.

Riots in Philadelphia. In Philadelphia, it is the constable's duty to protect property threatened by a riot or mob violence. If the constable has knowledge of the riot and fails to act, he is liable for damages done to the property and is guilty of a misdemeanor which is punishable by voiding the constable's commission.

Special Laws. Constables are authorized to arrest on view any professional thief, pickpocket or burglar found at any steamboat landing, railroad depot, church, banking institution, brokers office, place of amusement, auction room or common thoroughfare in the cities of Erie, Corry, Meadville or Titusville and in Erie and Crawford counties.

CIVIL DUTIES AND RESPONSIBILITIES

Collecting Money on an Execution — Concealment of Goods. Any person who possesses any goods and chattels belonging to another and conceals such goods with the intent of preventing the constable from taking them on a writ of execution is guilty of a misdemeanor and if convicted is subject to a fine of \$500.00 or imprisonment not exceeding one year, or both.

Execution and Return. Constables are required to state an account of the debt and costs on the back of executions received and shall make a legal return of the service of the execution. If the constable fails to make a legal return or makes a false return he is liable in an action

against himself and his bondsman for the amount of the original execution.

Money Collected on an Execution — Misdemeanor. Constables are required to pay over all monies collected on an execution. Failure to do so constitutes a misdemeanor and carries a penalty of \$100.00. Any constable convicted shall stand committed until the money is paid, together with interest, fines and costs and shall be prohibited from holding the office of constable for seven years.

Administering Oaths. Constables are authorized to administer oaths to appraisers who appraise and set aside property claimed on exemptions from levy and sale on execution.

Service of Process. Constables are authorized to serve processes and perform duties which coroners perform when the sheriff of any county is a party in a suit and there is no coroner to serve the processes.

Actions for Violation of Ordinances. The constable is required to serve summons and warrants for violation of borough ordinances when directed to him by the borough mayor or justice of the peace.

Process Against Constables.

When a summons, warrant of arrest or execution in a civil suit is issued against a constable, another constable to whom the summons, warrant or execution is issued is required to execute it. On his neglect or refusal to do so he is subject to payment of the whole amount lost.

Landlord and Tenant Proceedings.

After a distraint has been made under a landlord's warrant for rent, a constable or his deputy are authorized to proceed with appraisement and sale of the tenant's goods if the landlord demands it.

Liabilities. In addition to the liability of being subject to removal of office, constables are personally liable in actions of damages to any person who might be injured by their negligence or misconduct in the performance of their duty.

Constables may also be prosecuted for willfully and fraudulently taking any fee to execute and perform their duties other than those fees allowed by law. If convicted a constable could be subject to a \$500.00 fine or be imprisoned for one year, or both.

Constables in Pennsylvania—Glossary

Action of Damages

To recover a pecuniary compensation or an indemnity, which may be recovered in court by any person who has suffered loss, detriment, or injury whether to his person, property, or rights through the unlawful act or negligence of another.

Bail Piece

A certificate issued by a judge or other court officer authorized to keep records. The certificate must contain the fact that the bail is in a certain sum and in a particular case.

Capias

The general name for several kinds of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody; they are writs of attachment or arrest.

Dispossession Proceedings

Summary process by a landlord to oust the tenant and regain possession of the premises for nonpayment of rent or other breach of the conditions of the lease.

Distrain

Seizure; act of making a distress.

Distress

Seizure and detention of the goods of another as security to obtain satisfaction of a

claim, as for rent, taxes, or an injury, by sale of the goods seized.

Encumbrance

A claim, lien, charge, or liability attached to and binding real property.

Execution

Carrying some act or course of conduct to its completion.

Garnishee

A person who has money or property in his possession belonging to a defendant. He is warned to keep the money or property in his hands and not to deliver it to the defendant until the result of the suit is ascertained.

Mittimus

The name of an order in writing, issued by a court or magistrate directed to a sheriff, constable, or other officer commanding him to convey the person named to prison.

Non Est Inventus

"He is not found"; the constables return to a writ requiring him to arrest the defendant when the latter is not found within his jurisdiction.

Nulla Bona

"No goods"; the name of the return made by the constable for a writ of execution when he has not found any goods of the defendant within his jurisdiction which he could seize.

On View

An offense may take place within view of an officer so as to authorize arrest without a warrant when the officer has knowledge that an offense is being committed.

Precept

An order, emanating from an authority, to an officer commanding him to do some act within the scope of his powers.

Principal

A person who is competent in his own right to do a particular act for his own benefit and who contracts with another person to do the particular act for him.

Process

The means of compelling the defendant in an action to appear before the court.

Referees

A person to whom a cause pending in a court, is referred by the court, to take testimony, hear the parties, and report thereon to the court.

Scire Facias

A judicial writ, founded upon some matter of record, such as a judgment or recognizance, and requiring the person against whom it is brought to show cause why the person bringing it should not have the advantage of such record.

Warrant

A writ issued by a magistrate, justice, or other authority addressed to a sheriff, constable or other officer, requiring him to arrest the person named therein and bring him before the court to answer for some offense which he is charged with having committed.

Writ

A mandatory precept issued from court or magistrate.

Writ of Habeas Corpus

A writ directed to the person detaining another, which commands him to produce the body of the prisoner or person detained and to do whatsoever the judge or court directs.

Writ of Possession

A writ of execution employed to enforce a judgment to recover the possession of land. It commands the constable to enter the land and give possession of it to the person entitled to it under the judgment.

Writ of Restitution

A writ which is issued on the reversal of a judgment, commanding the constable to restore to the defendant the thing seized if it has not been sold, and if it has been sold, the proceeds; a writ which lies, after the reversal of a judgment, to restore to a party all that he has lost by the occasion of the judgment.

Constables In Pennsylvania

Criminal Procedures

Third in a Series

BY KATHLEEN A. LOOS

Arrest

AN ARREST IS THE SEIZING of a person and holding him to answer a criminal charge or civil demand.

Pennsylvania courts have ruled that it is not necessary to actually touch the person to make an arrest. A valid arrest may be made either with or without touching the body.

An officer may use as much force as is necessary in making an arrest; however, the use of guns is limited to cases where the arresting officer knows the accused has committed a felony and there is no other way to arrest him except to shoot. Mere suspicion that the accused has committed a felony does not justify shooting him to prevent his escape. An officer who shoots on the basis of mere suspicion does so at his own risk and becomes liable if it is proved that no felony was committed. Under no circum-

stances may an arresting officer shoot an escaping party when the charge is a misdemeanor.

An arresting officer is not required to show his right to make an arrest; however, it is wise for him to do so.

Once he is in custody, the accused must be informed of the nature of the charge against him and the authority of the officer to make the arrest. In fact, any arresting officer who refuses or neglects to certify the charges to the accused, or to someone acting in behalf of the accused, is guilty of a misdemeanor and is subject to a fine of \$500.00 or to imprisonment of one year, whichever the court may direct.

In accordance with Commonwealth law, arrests may not be made on Sunday, except in cases of treason, felony, breach of peace (this includes assault and battery), or violation of the fish laws. In addition, the Motor Vehicle Code does not authorize constables to

make Sunday arrests for violation of vehicle laws, although the Pennsylvania State Police may do so.

Constables are authorized to require bystanders to assist them in making an arrest. Any bystander who when asked refuses to assist the constable in the execution of his duties in any criminal case, in preserving the peace, or in apprehending and holding a person for a breach of peace charge is guilty of a misdemeanor and upon conviction may be fined \$500.00, undergo imprisonment for one year, or both. This same penalty is applicable to any bystander who obstructs, opposes, or interferes with a constable serving a process or making an arrest.

Arrest on View. Law violators may be arrested on view when the violation occurs within sight of the constable. If the charge is a felony, only suspicion that a felony occurred is required to permit an arrest. A constable may also arrest on view a party committing a misdemeanor in his presence, but case law precludes an arrest on view for an ordinary misdemeanor not committed in the constable's presence.

The Motor Vehicle Code authorizes arrests on view for felonies, misdemeanors, and accidents resulting in personal injuries. In such arrests, an information should be made immediately and filed with the proper magistrate. A copy should also be given or sent to the arrested party.

In other summary conviction cases and in cases where city ordinances are violated the constable is authorized to arrest on view. The exception to this is where the law or ordinance being violated contains a provision to the contrary.

Arrest in Civil Actions Writs of Capias

A writ of capias is a warrant of arrest used in civil actions, such as certain kinds of suits, and actions for recovery of money collected by a public officer or for official misconduct of an officer. In addition, it may be used in the case of payment of fines and penalties under borough ordinances.

There are two types of writs of capias, a capias ad respondendum and a capias ad satisfaciendum. A capias ad respondendum is similar to a summons. Its purpose is to notify the defendant to defend his action and to procure the defendant's arrest until bail has been furnished. The constable serves this writ the same way he serves any warrant of arrest and takes the defendant before a magistrate for trial. If the defendant offers bail, the constable may take it and not bring the defendant before the magistrate. The constable should be extremely careful about taking bail under a writ of capias ad respondendum for he may be held liable for failure to take sufficient bail if the defendant fails to appear.

A capias satisfaciendum is issued for collection of damages or debt and damages in certain civil actions. It may be used for the collection of fines and penalties under borough ordinances. Bail is not acceptable under this writ.

Attachments and Bench Warrants. These are processes issued by the court itself, or "from the bench" for the attachment or arrest of a person for contempt of court or for failing to obey court orders. They may be used in cases of failure to file accounts or turn over monies, of failure by officials

to perform their duties after the court has directed them to do so, or in cases where persons refuse to answer a subpoena or to answer when brought to a hearing. Attachments or bench warrants are executed in the same way as a warrant of arrest and no bail may be taken from the defendant arrested. He is subject to the court's order after arrest.

The constable should make a return after he has served a writ of *capias* or a bench warrant in the same manner as he does for any warrant of arrest. Usually the return is made on the back of the writ and states how and when the writ was served. If the constable cannot find the accused, the return should say so; and if the accused has escaped and been helped by others, the names of those who helped him escape, if known, should be noted on the return.

The Information or Complaint

An information may be made by anyone. The crime charged need not have been seen committed and the information may be made upon knowledge received from others. If the person who makes an information swears that he believes what he has been told, it is sufficient. A minor who is old enough to understand the oath required may make an information. It is for the justice to decide if the minor understands the meaning and seriousness of taking the oath.

An information must contain certain essential elements. These are:

(1) the time of the crime — to show it is not barred by the statute of limitations; (2) the place of the crime — to show jurisdiction of the magistrate, (3) it must be in writing

—this is required by law, (4) a description of the crime — the specific crime must be charged (This is very important. The crime is "robbery" not "suspicion of robbery"; "suspicion" is not a crime). (5) the defendant must be named (6) there must be an oath swearing that the complaint is true—this is required by the Constitution, (7) the information must contain the statement that the crime is against the "peace and dignity of the Commonwealth of Pennsylvania."

The Warrant. If the magistrate decides that the charge on the information is probable, he then issues a warrant of arrest to the constable or other peace officer.

Both the state and federal constitutions prohibit the seizure of any person without the issuance of a warrant that shows probable cause why the person should be arrested. The only exception to this guarantee is that fleeing felons and persons who commit misdemeanors in the presence of an officer may be arrested without a warrant. The arresting officer, however, should make out an information as soon as it is possible after such an arrest.

A valid warrant of arrest must name a specific person. If the name of the person is not known, then a nickname or alias should be used with a description sufficient to permit identification. John Doe warrants are not acceptable because they are not a description of anyone. The warrant should also contain the name of the crime charged.

A warrant may be served anywhere in the Commonwealth; however, if it is served outside of the county in which it was issued, the constable or other arresting officer

is required to take the defendant before a local magistrate to allow the defendant to enter bail. If the crime charged is not one where bail is permitted, or if the defendant cannot enter bail, the constable

should take him to the magistrate who issued the warrant. Illustrated below are sample information or complaint and warrant of arrest and return forms:

FORM OF INFORMATION OR COMPLAINT
COMMONWEALTH OF PENNSYLVANIA

v.

Defendant

I, the undersigned, do hereby state under oath (affirmation)

(1) My name is _____ and I live at _____;

(2) I accuse _____, who lives at _____, with violating the penal laws of the Commonwealth of Pennsylvania, or,

(I accuse an individual whose name is unknown to me but who is described as _____ and who bears the nickname or popular designation of _____ with violating the penal laws of the Commonwealth of Pennsylvania), or,

(I accuse an individual whose name, nickname, or popular designation is unknown to me but who is described as _____ with violating the penal laws of the Commonwealth of Pennsylvania and, therefore, I have designated him herein as John Doe);*

(3) The date (and day of the week) when the accused committed the offense was on or about _____;

(4) The place where the offense was committed was in the County of _____;

(5) The acts committed by the accused were

_____, all of which were against the peace and dignity of the Commonwealth of Pennsylvania (and contrary to the Act of Assembly _____);

(6) I ask that a warrant of arrest or a summons be issued and that the accused be required to answer the charges I have made; and

(7) I swear to or affirm the within complaint upon my knowledge, information and belief, and sign it on _____, 19_____, before _____ whose office is that of _____

Affiant

*Does not make the arrest invalid because a description of the accused is included.

FORM OF WARRANT OF ARREST AND RETURN
COMMONWEALTH OF PENNSYLVANIA:

County of _____
To _____, or any other authorized person, in the name of the
Serving Officer
Commonwealth of Pennsylvania, you are commanded to take into custody
_____, _____, if (he) (they) be
Name, If unknown, description Address
found in the said Commonwealth, and bring (him) (them) before us at
_____, to answer the Commonwealth
Address
upon the complaint of _____ charging (him)
(them) with _____, and further to be dealt with accord-
ing to law, and for such purposes this shall be your sufficient warrant.
Witness the hand and official seal of _____, this date, _____, 19____.
Issuing authority

(SEAL)
Title
Bail to be demanded: \$ _____.

RETURN WHERE DEFENDANT IS FOUND

By authority of this warrant on _____, 19____, I took into cus-
tody the within named _____, and he is now
(at liberty on bail, posted before _____) (in the _____
jail) (before you for disposition).

Signature

Title

RETURN WHERE DEFENDANT IS NOT FOUND

After careful search I cannot find the within named defendant.

Signature

Title

The Search Warrant. Pennsylvania's Constitution guards against unreasonable searches and seizures and stipulates that warrants may not be issued without a description of the place to be searched and the property to be seized. The search warrant must also indicate that there is reasonable cause to believe the property sought is on the premises to be searched. The search warrant must also be supported by an oath or affirmation sworn to by

the affiant.

It is imperative that the search warrant specifically and carefully name the person or place to be searched and the articles sought. The courts have consistently ruled that a warrant for the search of one person or place and the seizure of certain articles cannot be used for the search of another person or place and the seizure of other articles. In fact, the courts have considered proper warrants so im-

portant that if a warrant is issued for 315 Reservoir Road which does not exist and the constable searches 317 Reservoir Road, the court will quash the warrant and refuse the evidence to be used in the case.

The warrant itself permits the constable to use force in searching a place if necessary.

Illustrated below are forms for the search warrant and the return:

FORM OF SEARCH WARRANT

COMMONWEALTH OF PENNSYLVANIA:

County of _____:

To _____, Constable of _____

WHEREAS, information and complaint have this day been made to _____, one of our justices of the peace in and for said county, upon the oath of _____, that the following articles, to wit (the specific articles and their value should be inserted here) were feloniously taken, stolen, and carried away from his house, at (municipality) aforesaid, and that there is just cause to suspect that the said goods, or some part thereof, are concealed in the house of _____ of the said (municipality). These are, therefore, to command you and each one of you, to make diligent search in the daytime, in the house of said _____, at _____, for the said stolen goods, and if you find the same, or any part thereof, that then you secure the said stolen goods, and bring the said goods, and also the person or persons in whose custody you find the same, before our said justice of the peace, to be examined concerning the premises, and further to be dealt with according to law.

WITNESS the said _____, who hath hereto set his hand and seal.

Justice of the Peace

My Commission Expires _____

FORM OF RETURN OF SEARCH WARRANT

PURSUANT to the within warrant, I made search for the goods therein described, at the place mentioned, but found the following, to wit: (list goods found); which said goods, so found, together with the body of (person having goods), I have in custody.

So answers

Constable,
Or,

PURSUANT to the within warrant, I made search for the goods therein described, at the place mentioned, but could not find any of them.

So answers

Constable

Search Without a Warrant. Pennsylvania's Constitution protects "persons, houses, papers, and possessions" from unreasonable search

and seizure, thus if a constable is making an arrest and notices illegal goods on the person or property,

such goods may be taken without a warrant and the seizure will not be deemed unreasonable. Of course the courts have final say as to what is an unreasonable search and seizure.

CIVIL PROCEDURES

In civil matters, constables are required to serve writs, collect small claims and enforce the rights of landlords against delinquent tenants.

Summons. The main civil process with which a constable is concerned is the summons which notifies the defendant or accused that an action has been started and that a judgment will be given against him if he does not answer the complaint. The summons tells the time and place the accused is to appear to defend himself and must be served not less than five nor more than eight days after the date it was issued and not later than four days before the hearing. If the defendant fails to appear and a judgment is rendered, the constable will be issued an execution

which commands him to collect on the goods of the accused by selling them for the debt which the accused owes.

Constables are to serve a copy of the summons to the defendant personally, to an adult member of his family, or to an adult member of the family where he resides. The summons may also be served to the clerk of the apartment house, boarding room or hotel, or other place of lodging where the defendant might reside. The summons should be served on persons only in the county in which the suit is begun, however, if, upon inquiry, the constable cannot ascertain the residence of the defendant in the county, the summons may be served at his place of business to his partner, agent or other person in charge of his business.

After the constable has served the summons he is required to make a return of the fact in writing in enough detail that it will show that the magistrate has jurisdiction of the case. The following is a sample form of return:

CONSTABLE'S RETURN OF SERVICE

NOW, this _____ day of _____, 19____, personally appeared _____ Constable, who being duly sworn states that he

Name of Constable _____
served the within summons on _____, defendant, at _____
Name of Defendant _____
_____ o'clock, on the _____ day of _____, 19____, at _____
Place where Served _____

How service was made:
Personally, at Dwelling Place, Etc.
So answers

SWORN and subscribed to before _____ Constable
me this _____ day of _____,
19____.

Justice of the Peace

Subpoena. A subpoena is a writ which requires a witness to appear at a hearing and give testimony. It commands the witness to lay aside all excuses and pretenses he might have for not appearing in court. The names of several witnesses might appear on one subpoena and it is only necessary for

the constable to read it to the witness or witnesses, as the case may be. Of course, the constable must make a return of his service of the subpoena. The return should be printed on the back of the subpoena and may be made in the following form:

**RETURN OF SERVICE OF SUBPOENA
COMMONWEALTH OF PENNSYLVANIA:**

On the _____ day of _____ County, SS:
I served the within subpoena on the
within named _____ by reading the same to each of them.
No. _____ services _____ \$ _____
miles actually traveled direct,
at _____ per mile

TOTAL \$ _____

Personally appeared before me, the subscriber _____, who being duly sworn deposes and says that he made the number of services and they are true as stated, and that he traveled the number of miles above set out in making services of this subpoena and that said miles were necessarily traveled.

Constable

SWORN and subscribed before me this
_____ day of _____, A.D.

Justice of the Peace

Sometimes constables are required to serve subpoenas which have been issued by courts of quarter sessions or common pleas. Such subpoenas are to be served the same way subpoenas issued from magistrates are served.

If a witness refuses to answer a subpoena, the constable will be issued a writ of attachment which instructs him to personally bring the witness before the court. This is called an attachment for contempt of court and is served in the same manner as a warrant of arrest.

Writ of Execution. The judgment of the court is enforced by execution procedures. An execution writ is issued by the court to the

constable and instructs him to collect the debt owed by the defendant by selling his goods. The first step in an execution proceeding is to make a levy, which is the actual taking of the defendant's goods and holding them for sale. Usually the plaintiff only requires that the officer make a list of the goods levied upon and will not demand the goods be actually impounded. The constable may levy on the defendant's personal property but not on "fixtures" that are attached to real estate. In addition, the defendant is entitled to \$300.00 worth of property to be exempted from sale. It is the constable's duty, if requested by the defendant, to get three per-

sons disinterested in the case to appraise the property the defendant wishes to keep under the \$300.00 exemption. When appraised, such property is exempted and cannot be sold. Clothing, Bibles and school books are also exempt from sale. When the constable makes a levy he must list the goods on the back of the execution or attach a list of the goods levied upon to the execution writ. The levy is then good for 20 days and the sale must be completed within that time or the magistrate will have to continue the lien by issuing an alias execution, which extends the original levy.

When a defendant wishes to have time in which to pay his debt and if he owns land free of all incumbrances or gives bond, a stay of execution may be given and the constable may not proceed to sell the defendant's goods. The stay of execution is as follows: From \$5.33 to \$20.00—3 months stay; from \$20.00 to \$60.00—6 months stay; from \$60.00 to \$300.00—9 months stay.

If a stay of execution is not given, the constable proceeds with the sale. Six days notice of the sale by posting at least 6 handbills in

noticeable public places is required. After the sale, the constable is required to make a return to the magistrate and pay over the money to him. The constable should have the magistrate issue a receipt for the money paid.

It should be noted that only selected criminal and civil procedures have been described here. Constables are urged to familiarize themselves with all procedures of civil and criminal law. The district attorney is the constable's best friend. He should be consulted if the constable is in doubt about any procedure.

GLOSSARY

Affiant

the person who makes an information or complaint

Felon

a person who commits a felony

Felony

serious crimes such as murder, manslaughter, robbery, rape, embezzlement and counterfeiting.

Misdemeanor

lesser crimes, crimes which are not felonies. The term is used to describe all crimes and offenses for which the law has not provided a particular name.

Constables In Pennsylvania

Part IV—Preparation of the Case

(Last in a Series)

BY KATHLEEN A. LOOS

INVESTIGATION INTO THE FACTS SURROUNDING a case is a vital part of the constable's duties. A prosecutor is effective only if he has been supplied with reliable facts on which to base his case. A criminal case can be won or lost on the type of investigation conducted by the constable.

An investigation should only contain facts. Beliefs, opinions, or ideas about a case have no place in an investigation and the only duty a constable has is to present the facts.

A constable should be properly equipped with a notebook and pen or pencil for his investigative work. He should write every bit of information he gets concerning the case in his notebook, including the date and time of his observations, interviews with witnesses, and any fact he receives that might be pertinent to the crime.

In addition to his notebook, a constable should have a writing tablet or pad for recording statements that witnesses might make. Often a witness to a crime will give his facts freely at a first interview, but when a typed statement is prepared for the witness to sign, he will have second thoughts about appearing in court. To avoid such complications, the constable should record the statement of the witness immediately and have him sign it. Then the prosecutor has a very good chance of the witness sticking to his statement when the case goes to court.

During an investigation the constable obtains objects which are to become important evidence in the case. If an object taken is small, it should be placed in an envelope or folder and sealed. The name of the object, the date, time and place where it was found should be recorded on the face of the envelope. In addition, the constable should sign his name on the envelope. The constable should also have some labels or tags which could be at-

tached to large objects. Some objects of evidence might be so valuable that they have to be wrapped and completely sealed so they cannot be tampered with.

Any object connected with an investigation should be recorded in the constable's notebook. This recording should include the date, time, place found and where the object is being kept. Without such record keeping the constable will have to rely upon his memory when giving testimony. It can be easily understood how recorded identification of evidence is far superior to verbal identification.

Each entry the constable makes in his notebook should begin with the hour of the day or night (3:30 A.M. or 3:30 P.M.). The date should be recorded, as well as the day of the week (Wednesday, February 10, 1965). The third fact to be recorded is the location of where the information was taken. Finally, the facts surrounding the case should be entered. If any doubt exists concerning the recording of some fact it should be put down, whether or not the constable considers it important. A conviction can depend on the most minute detail (whether the night was clear or foggy, whether a neighbor's car was parked in front of his house or not, whether a street was blocked or not blocked). Facts such as these may not seem important to the constable at the time of investigation, but if it is related to the crime in any manner, it may be of vital importance to conviction of the criminal and should, therefore, be recorded. On the other hand, the innocent must also be protected and a minor detail may immediately clear an innocent party and allow the constable to pursue the guilty one.

THESE ARE SEVERAL PITFALLS a constable should avoid when he is investigating a case. One danger to avoid is prejudice and making up one's mind about the case. A constable is not entitled to an opinion, only a jury has this right. Furthermore, an investigative report that is slanted in any way could cause the case to be lost. Constables should take utmost care in reporting their facts impartially.

Another danger to avoid in making an investigation is inaccurate reporting. This can only be a result of carelessness and may easily result in the case being lost or the arrest of the wrong person. Knowledge of the laws to be enforced is the only way a constable can be sure he is not missing some essential required before arresting a wrongdoer.

Failure of observation can also lead to a faulty report. Investigations can be adequate on the surface but lack sufficient detail to give the jury a complete picture of the crime. A constable should be able to train himself to determine what and how many facts are needed to make his report complete. For instance, if a constable is called upon to investigate a crime at a certain location, merely a statement that a crime took place at a particular spot is not enough. If the crime took place on a road or highway the exact spot should be located (as between Carlisle and Shippensburg and how many miles north and south of these two points). If an individual was seen committing the crime, his exact description should be recorded, his height, weight, color of hair, eyes and complexion, his build — heavy or thin, a description of the clothes he was wearing and any other characteristics which might lead to an identification.

Constables who desire to sharpen

their observation powers can do so by several simple methods. For example, a constable can walk down the street, look at various objects around him and after getting back to his office test his memory by writing down his observations. A constable will be able to improve his observation powers by making a few such trips and testing his memory. A constable should also learn to approximate height and weight. This can be done by asking acquaintances their height and weight. After some experimentation the constable will be able to judge the height and weight of any individual fairly.

Types of Evidence. Evidence is whatever tends to prove or disprove a point in question or to influence the belief about it. Volumes have been written about evidence and the admissibility of evidence in law suits. Constables need not concern themselves with all the laws pertaining to evidence but they should be familiar with a few of the general rules.

General rules of evidence include: (1) relevancy — evidence must tend to prove the issue of the case and must be confined to the case at hand. If evidence is not relevant it is not admissible in a case. For example, if a man is accused of stealing a car, it would not be relevant to prove that he is a habitual drunkard; (2) hearsay — this type of evidence is based upon what a person has heard from others, not what he knows of his own knowledge. Hearsay evidence is generally not acceptable because it is not made under oath in a court of law. In this respect, constables should be particularly careful when investigating a case to make certain that a witness who makes a statement is telling what he knows

of his own knowledge and not what he has heard from others; (3) best evidence — the general rule here is that parties testifying are to produce the best evidence available to the case. If several grades of evidence are available the best of these grades should be presented. This rule does not necessarily mean that only the best evidence is acceptable in court. If only secondary evidence is available it should be presented; (4) admissions — here, if a person makes a statement against his own interest and the statement can be proved by the person who heard it, it can be admitted as evidence; (5) circumstantial evidence — this type of evidence is used when there are no witnesses to a crime nor actual evidence of the commission of a crime. It is proof of surrounding circumstances and must be so well-founded that no reasonable doubt exists as to the defendant's guilt.

The above mentioned rules of evidence are by no means exhaustive and constables who wish to present a strong case should study what constitutes good and admissible evidence.

There are two invaluable sources for constables who wish to learn about evidence. The first source is the free training schools for constables and police held throughout the Commonwealth by the Public Service Institute of the Department of Public Instruction. Further information concerning the location of these schools may be obtained by writing to Frederick H. Miller, Executive Director, Public Service Institute, Room 49 Education Building, Harrisburg, Pennsylvania. The second source of assistance available to constables is the prosecuting attorney who can instruct as to what evidence is required for a complete case.

Specific Crime. Constables must have a working knowledge of the principle of the crime with which he charges the accused. The crime charged must appear on the information and is the clause which describes what statute has been violated. If the crime charged is not included in the information or if it is erroneously written, the accused might be dismissed. The crime charged appears in the information after the time, place and person accused as follows:

The acts committed by the accused were ". . . FELONIOUSLY TOOK AND CARRIED AWAY a Ford Convertible Automobile, the property of Donald Brown, WITH INTENT TO CONVERT THE SAME TO HIS OWN USE . . ."

The above mentioned crime is only one sample of many crimes contained in The Penal Code of 1939, The Motor Vehicle Code and other miscellaneous laws. Constables are urged to familiarize themselves with the types of crimes under Commonwealth law.

Citizens expect law and order to be maintained so that they can conduct their affairs freely and without fear. It is imperative that the constable act with highest regard toward the law. Not only should he know the principles of law and procedure in relation to his duties, but he should also be concerned with the best methods of carrying out those duties.

There is no substitute for good public relations. Public resentment toward enforcement of the law can be caused by poor conduct on the part of the constable. It is hoped that constables will execute their responsibilities with care so there can be no cause for friction with the public. Only by having a thorough knowledge of the duties of his office can the constable be assured he is acting in the best interests of all concerned.

It is the hope of the Department of Internal Affairs that this series of articles will be useful to constables, but it should be emphasized that the series is of necessity only a brief review of the duties and responsibilities of the office of constable. The series cannot be considered to be a legal guide and should not be used as such.

LIST OF BIBLIOGRAPHICAL SOURCES

Manual for Police and Constables in Pennsylvania by Ross H. Pentz, George T. Bisel Company, 710 South Washington Square, Philadelphia 6, Penna., 1952.

Pennsylvania Criminal Law and Criminal Procedure, Official State Police Manual, prepared by the Pennsylvania State Police Academy, The Telegraph Press, Harrisburg, Penna., 1964.

Pennsylvania Criminal Law and Procedure for Justices of the Peace — Constables — Policemen by Judson E. Ruch, Esquire, 49 West Market Street, York, Penna., 1958.



DOG LAW

Purdon's Pennsylvania Statutes and Consolidated Statutes. Title 3. Agriculture. Chapter 8. Dogs. Dog Law

§ 459-102. Definitions

...

“Police officer.” Any person employed or elected by this Commonwealth, or by any municipality and whose duty it is to preserve peace or to make arrests or to enforce the law. The term includes **constables** and dog, game, fish and forest wardens.

...

§ 459-302. Seizure and detention of dogs; costs; destruction of dogs

(a) General rule.--**It shall be the duty of every police officer**, State dog warden, employee of the department or animal control officer to seize and detain any dog which is found running at large, either upon the public streets or highways of the Commonwealth, or upon the property of a person other than the owner of the dog, and unaccompanied by the owner or keeper. **Every police officer**, State dog warden, employee of the department or animal control officer may humanely kill any dog which is found running at large and is deemed after due consideration by the **police officer**, State dog warden, employee of the department or animal control officer to constitute a threat to the public health and welfare.

(b) Licensed dogs.--The State dog warden or employee of the department, the animal control officer, or the chief of police or his agents of any city, borough, town or township, the **constable** of any borough and the **constable** of any incorporated town or township shall cause any dog bearing a proper license tag or permanent identification and so seized and detained to be properly kept and fed at any licensed kennel approved by the secretary for those purposes and shall cause immediate notice, by personal service or registered or certified mail with return receipt requested, to the last known address, which shall be set forth in the license application record, of the person in whose name the license was procured, or his agent, to claim the dog within five days after receipt thereof. The owner or claimant of a dog so detained shall pay a penalty of \$50 to the political subdivision whose police officers make the seizures and detention and all reasonable expenses incurred by reason of its detention to the detaining parties before the dog is returned. If five days after obtaining the postal return receipt, the dog has not been claimed, such chief of police, or his agent, or a **constable**, or State dog warden or employee of the department shall dispense the dog by sale or by giving it to a humane society or association for the prevention of cruelty to animals. No dog so caught and detained shall be sold for the purpose of vivisection, or research, or be conveyed in any manner for these purposes. All moneys derived from the sale of the dog, after deducting the expenses of its detention, shall be paid through the Department of Agriculture to the State Treasurer for credit to the Dog Law Restricted Account.

234 Pa. Code Rule 103. Definitions.

PART A. Business of the Courts

Rule 103. Definitions.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

...

POLICE OFFICER is any person who is by law given the power to arrest when acting within the scope of the person's employment.

...

234 Pa. Code Rule 515. Execution of Arrest Warrant.

Rule 515. Execution of Arrest Warrant.

(A) A warrant of arrest may be executed at any place within the Commonwealth.

(B) A warrant of arrest shall be executed by a police officer.

...

For the definition of police officer, see Rule 103.

Referral: Sec 234 Rule 103 –
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter1/s103.html&d=reduce>

Sec 234 Rule 515 –
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/234/chapter5/s515.html>

ACT 147

PA Supreme Court – IN RE ACT 147 OF 1990

528 Pa. 460 (1991) / Argued April 11, 1991.

“Simply stated, a constable is a peace officer.”³ A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it”

...

Footnote # 3. The constable is a police officer.

OPINION OF THE COURT

PAPADAKOS, Justice.

This case involves the status of constables and deputy constables in our governmental system. Nancy M. Sobolevitch, Court Administrator of Pennsylvania, invokes this Court's original jurisdiction pursuant to Article V, sections 2 and 10 of the Pennsylvania Constitution (involving separation of powers), and 42 Pa.C.S. § 721(3) (involving *quo warranto*),¹ to seek a declaratory judgment challenging Act 147 recently enacted by our Legislature and affecting the status of constables and deputy constables. For the

[528 Pa. 462]

reasons set forth below, we must declare Act 147 to be invalid and unenforceable.

On November 19, 1990, Senate Bill 983, entitled "An Act Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, Further Providing for the Jurisdiction of the Philadelphia Municipal Court; and Adding Provisions Relating to Constables," passed the General Assembly. On November 29, 1990, the Governor of Pennsylvania signed the legislation into law as Act 147 of 1990, with the Act taking effect in sixty days.

Act 147 provides for the supervision, training and certification of constables and deputy constables engaged in "judicial duties" by this Supreme Court through our Administrative Office of Pennsylvania Courts, with a surcharge of \$2.00 on each fee payable for the performance of judicial duties by constables and deputy constables as the funding mechanism for the program of training and certification. The Act further provides for mandatory decertification and discretionary disciplining of constables and deputy constables through the President Judges of the Courts of Common Pleas.

Act 147 also provides, in a nonseverable provision, that constables and deputy constables "shall enjoy all the rights and privileges accorded to constables by . . . the Public Official and Employee Ethics Law," which provision appears to attempt to restrain this Court from imposing any limitation on the political activities of constables and deputy constables, despite the extensive supervisory and disciplinary duties over constables and deputy constables imposed on the court system by the Act.

In light of these legislatively-mandated restrictions on this Court for power to supervise personnel who, by operation of Act 147, come directly under this Court's administrative authority, the Court Administrator of Pennsylvania has brought a petition seeking a declaratory judgment as to the constitutionality and validity of Act 147 of 1990, 42 Pa.C.S. § 2941, *et seq.*, in whole or in part.

[528 Pa. 463]

Section 5 of Act 147 provided that "(t)his act shall take effect in 60 days." At that time, constables and deputy constables were required to begin collecting the surcharge required under the Act, the Minor Judiciary Education Board was obligated to make provision for the necessary education and training courses, and the Administrative Office of Pennsylvania Courts was obligated to determine how the Act is to be implemented in light of our Political Activity Prohibition Order and related considerations. The Court Administrator of Pennsylvania therefore sought a stay of the effective date of the operation of the Act, pending the outcome of this declaratory judgment action. On January 18, 1991, this Court granted the Court Administrator's motion to stay.

A constable is an elected official authorized to appoint deputy constables. 13 P.S. § 1, *et seq.* A constable is an independent contractor and is not an employee of the Commonwealth, the judiciary, the township, or the county in which he works. *Rosenwald v. Barbieri*, [501 Pa. 563, 462 A.2d 644](#) (1983). In *Rosenwald*, a constable, who had been sued by a property owner for alleged libel and negligent infliction of emotional distress in connection with the posting of property, brought a legal action seeking a declaration that he was entitled to legal representation in the action by at least one of a number of respondents including: the President Judge of the Montgomery County Court of Common Pleas, the District Justice of Montgomery County, the Attorney General of Pennsylvania, Cheltenham Township and the Court Administrator of Pennsylvania.

This Court held that constables were neither acting for nor under the control of the Commonwealth and that, therefore, they could not be considered to be employees of the Commonwealth. *Rosenwald*, 501 Pa. at 569, 462 A.2d at 647. Thus, this Court determined that the Attorney General was not responsible for providing legal counsel to constables. Likewise, this Court determined that a constable was not an employee of the township under the Judicial Code, 42 Pa.C.S. §§ 8547 and 8548. *Rosenwald*,

[528 Pa. 464]

501 Pa. at 570-71, 462 A.2d at 647-48. This Court also found no legal duty on the part of the President Judge and the District Justice to provide legal representation. *Rosenwald*, 501 Pa. at 568, 462 A.2d at 646.

With respect to the constable's claim against the Court Administrator, this Court held that the Administrator was not obligated to provide legal representation to the constable based upon the Rules of Judicial Administration. The plaintiff in *Rosenwald* claimed that under Rule of Judicial Administration 505, he was entitled to legal representation by the Court Administrator. However, this Court held that the

constable was not entitled to representation by the Court Administrator because constables do not fall within the definition of "personnel of the system."

Rule of Judicial Administration 102 defines "personnel of the system" as "judges and other judicial officers, their personal staff, the administrative staff of courts and justices of the peace, and the staff of the administrative office and other central staff." Rule of Judicial Administration 102 defines "related staff" as "all individuals employed at public expense who serve the unified judicial system, that the term does not include personnel of the system." The Rule further defines "system and related personnel" as "personnel of the system and related staff. *The term includes district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders. . . .*" (Emphasis added). On the basis of these definitions, this Court held that:

the term related staff covers those whose function aids the judicial process but who are not supervised by the courts. These definitions, clearly distinguish between personnel of the system and related staff. Under the definitions, we find that plaintiff [constable] is included in related staff and not personnel of the system. As we find that a constable is by definition included in the related staff, we conclude that constables are not by definition personnel of the system, which would permit representation as set forth under Rule 505 of Judicial Administration.

Rosenwald, 501 Pa. at 569-70, 462 A.2d at 647.

Thus, in defining the relationship of constables to the Unified Judicial System, this Court found that constables were related staff who aid the judicial process but who are not supervised by the courts. Prior to Act 147, constables might be said to orbit the Unified Judicial System, although at some distance from the system's center, as related staff who aid the judicial process but who are not directly supervised by the courts. Furthermore, no court rules of conduct or directives specifically addressed their behavior in that capacity.

Section 1 of Act 147 amends Section 102 of Title 42 Pa.C.S. to include within the definition of "officer enforcing orders":

(4) A constable or deputy constable while actually engaged in the performance of judicial duties as defined in section 2941. . . .

Section 4 of Act 147, amending Subchapter C of Chapter 29 of Title 42, 42 Pa.C.S. § 2942(b), provides:

The Supreme Court shall have the power to prescribe general rules governing practice, procedure and conduct of all officers serving process, or enforcing orders, judgments or decrees of any court or district justice. Constables and deputy constables may perform judicial duties if they are certified pursuant to section 2943 and, while doing so, shall be subject to the supervision of the president judge of the judicial district in which they were elected or appointed. The president judge may appoint a deputy court administrator for the purpose of assisting him in administering the constable system in the judicial district.

Act 147 further provides, at 42 Pa.C.S. § 2948(c):

Administration. — The Administrative Office shall administer the constables and deputy constables who are certified under section 2943 pursuant to the Pennsylvania Rules of Judicial Administration as the governing authority may direct.

Act 147 establishes a mandatory "Constables' Education and Training Program," providing for certification of constables and deputy constables in connection with the performance of "judicial duties," such as service, execution and return of court authorized process, levy, sale and conveyances, control of monies and custody of persons, through a program of instruction and examination provided by the Minor Judiciary Education Board. 42 Pa.C.S. § 2943.

Funding for this mandatory education and training program is through a surcharge of \$2.00 on each fee payable to constables and deputy constables for the performance of judicial duties, which monies are turned over monthly to the county treasurer and forwarded to the Pennsylvania Department of Revenue for deposit into a special restricted receipts account within the General Fund to be known as the Constables' Education and Training Account. From this fund the General Assembly will annually appropriate to the Court Administrator of Pennsylvania "such funds as may be necessary to carry out the provisions of this act." 42 Pa.C.S. § 2947(l)-(p).

Act 147 further establishes a system of "discipline" for constables and deputy constables, providing that conviction of or a plea of nolo contendere to murder, a felony or a misdemeanor will automatically result in loss of certification to perform judicial duties, as well as suspension from such duties by the President Judge. If the conviction is affirmed after all appeals are exhausted, the President Judge is required to revoke certification. If the conviction is reversed, the President Judge must immediately lift the suspension. 42 Pa.C.S. § 2948(a).

Act 147 further provides that a constable or deputy constable convicted of or pleading nolo contendere to murder or a felony is forever barred from performing judicial duties. Where the matter involves a misdemeanor, however, a constable or deputy constable "may . . . seek recertification pursuant to section 2943(a) (relating to certification)"

upon the happening of certain preconditions. 42 Pa.C.S. § 2948(b).

[528 Pa. 467]

Act 147 also provides that the President Judge has the power of suspension or revocation of certification of a constable or deputy constable, upon petition of any person supported by affidavit and issuance of a rule to show cause, for "incompetence, neglect or violation of any rule of court relating to the(ir) conduct . . . in the performance of their judicial duties." Pending a final ruling, the President Judge may suspend or restrict the certification of the accused constable or deputy constable if the facts alleged demonstrate a "clear and present danger to the person or property of others."

Section 4 of Act 147, amending Subchapter C of Chapter 29 of Title 42, 42 P.S. § 2942(d), provides:

Nonseverable provisions. — Notwithstanding the provisions of this or any other law to the contrary, all constables and deputy constables shall enjoy all of the rights and privileges accorded to constables by section 10 of the act of October 4, 1978 (P.L. 883, No. 170), referred to as the Public Official and Employee Ethics Law. This subsection is nonseverable from the remainder of this subchapter. In the event that section 10 of the Public Official and Employees Ethics Law or this subsection is invalidated or suspended as to constables or deputy constables, then this entire subchapter shall be deemed to be invalidated or suspended.

Section 10 of the Public Official and Employees Ethics Law, 65 P.S. § 410 provides:

Constables. — Nothing in this act, or in any other law or court shall be construed to prohibit any constable from also being an officer of a political body or political party as such terms are defined in the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code, and the same may hold the office of a county, State or national committee of any political party, and may run for and hold any elective office, and may participate in any election day activities.

[528 Pa. 468]

Pursuant to Article V, section 2 of the Pennsylvania Constitution, the Supreme Court of Pennsylvania is the supreme authority over the Judicial Branch of government of the Commonwealth of Pennsylvania. Consistent with this constitutionally-mandated authority, this Court has adopted various means to maintain a "steadfast separation of partisan political activity from the judicial function." *In re Prohibition of Political Activities by Court-Appointed Employees*, [473 Pa. 554](#), 560, [375 A.2d 1257](#), 1259-60 (1977).

For example, this Court has adopted a Code of Judicial Conduct which, in Canon 7, severely limits the political activity of judges and judicial candidates, consistent with the elective process. Likewise, Rule 15 of the Rules Governing Standards of Conduct of District Justices imposes similar restrictions on District Justices.

In addition, by a series of administrative directives issued through the Administrative Office, culminating in the Administrative Order dated June 29, 1987, entitled "In re: Prohibited Political Activity by Court-Appointed Employees," 82 Judicial Administration Docket No. 1, generally known as the Political Activity Prohibition Order, this Supreme Court has promulgated guidelines which prohibit partisan political activity by court-appointed employees. The term "court-appointed employees" includes, but is not limited to:

all employees appointed to and who are employed in the court system, statewide and at the county level, employees of the Administrative Office of Pennsylvania Courts, Court Administrators and their employees and assistants, court clerks, secretaries, data processors, probation officers, and such other persons serving the judiciary.

The historical background to the order of June 27, 1987, is set forth in *In re Prohibition of Political Activities by Court-Appointed Employees*, [473 Pa. 554](#), 558-60, [375 A.2d 1257](#), 1258-59 (1977).

A substantial and well-documented history of the regulation by this Court, pursuant to our supervisory powers over the Judicial Branch of state government under the Pennsylvania

[528 Pa. 469]

Constitution, of partisan political activity by elected and appointed judicial officers as well as court-supervised personnel, precedes the enactment of Act 147.

In *Kremer v. State Ethics Commission*, [503 Pa. 358](#), [469 A.2d 593](#) (1983), this Court had occasion to consider whether the financial disclosure requirements of the Ethics Act² applied to the judiciary. In an opinion authored by Mr. Justice Zappala, this Court held that the legislation infringed upon the constitutional power of a co-equal branch of government, and therefore could not be applied to the Judiciary. In particular, this Court held:

Under the doctrine of separation of powers, the legislature may not exercise any power specifically entrusted to the judiciary, which is a co-equal branch of government, *Commonwealth v. Sutley*, 474 Pa. 256, 378 A.2d 780 (1977). Article 5, § 10 of the Constitution of Pennsylvania gives the Supreme Court the power to supervise the courts. It reads in relevant part as follows:


(a) The Supreme Court shall exercise general supervision and administrative authority over all the courts and justices of the peace . . .

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure, and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes or appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose.

All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

Legislation that infringes on this Court's authority over courts is invalid.

503 Pa. at 361-62, 469 A.2d at 595.

 **Simply stated, a constable is a peace officer.**³ A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it. *Commonwealth v. Deacon*, 8 Serg. & R. 47, 49 (1822). By statute in Pennsylvania, a constable may also serve process in some instances. See generally, 13 P.S. §§ 41-46. See also, *In re Borough High Constables*, 32 Del. 335 (1944); *Rich v. Industrial Commission*, 15 P.2d 641, 80 Utah. 511 (1932); *State v. Franklin*, 80 S.C. 332, 60 S.E. 953, 955 (1908); *Somerset Bank v. Edmund*, 81 N.E. 641, 76 Ohio St. 396, 11 L.R.A., N.S. 1170, 10 Ann.Cas. 726 (1907); *Leavitt v. Leavitt*, 135 Mass. 191 (1883). As a peace officer, and as a process server, a constable belongs analytically to the executive branch of government, even though his job is obviously related to the courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally. Act 147 is unconstitutional and violates the separation of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory authority of the judicial branch. It attempts to make constables "personnel of the [judicial] system" and this can no more be done than attempting to make the governor, members of the legislature, district attorneys or sheriffs "personnel of the system." At most, constables are "related staff" under the Rules of Judicial Administration. They cannot, however, be made part of the judicial branch under our Constitution. See, *Rosenwald, supra*. To attempt to do so

[528 Pa. 471]

constitutes a gross violation of the separation of powers. Personnel whose central functions and activities partake of exercising executive powers cannot be arbitrarily made part of another branch of government whose functions they do not perform. To do so interferes with the supervisory authority of the Supreme Court just as much as attempting to dictate how that authority is to be exercised over personnel who are properly part of the judicial system. See, *Kremer, supra*. In consequence, we find Act 147 unconstitutional and invalid. See also, *Snyder v. Commonwealth, Unemployment Compensation Board of Review*, [509 Pa. 438](#), [502 A.2d 1232](#) (1985).

Special note must be taken of that part of Act 147, which is expressly made nonseverable from the rest of Act 147, and which attempts to permit constables and deputy constables to continue to engage in partisan political activity (see above). Since we have held that constables and deputy constables cannot be brought under the umbrella of the judicial system, we make no comment on the wisdom of this provision and we are in no position to ascertain whether the legislature would extend such blanket permission to engage in political activities to constables where they are not, and cannot be, part of the judicial personnel system. Suffice to say, the legislature had made this section nonseverable and since we find the rest of Act 147 unconstitutional and invalid, this section must be struck down as well.

For the reasons set forth above, our judgment is that Act 147 is hereby declared to be infested with unconstitutionality and hence is, and the same must be, declared to be invalid and unenforceable.

ORDER

PER CURIAM.

AND NOW, this 6th day of November, 1991, the Application for Relief in the Nature of a Motion to Modify Order Staying and Suspending the Effective Date of Act 147 of 1990 is dismissed as moot.

[528 Pa. 472]

McDERMOTT, J., concurs in the result.

LARSEN, J., notes his dissent.

NIX, C.J. did not participate in the consideration or decision of this matter.

FootNotes

1. *Quo warranto* is the sole exclusive method to try title or right to public office. *Spykerman v. Levy*, [491 Pa. 470](#), [421 A.2d 641](#) (1980); *League of Women Voters of Lower Merion and Narberth v. Board of Commissioners of Lower Merion Township*, [451 Pa. 26](#), 301 A.2d 797 (1973); *DeFranco v. Belardino*, [448 Pa. 234](#), 292 A.2d 299 (1972). To determine whether constables and deputy constables can properly have the status of office holders in the judicial system is properly tried in a *quo warranto* action. Original jurisdiction in the Supreme Court for actions in *quo warranto* is, of course, based on 42 Pa.C.S. § 721(3).

2. Act of October 4, 1978, P.L. 883, No. 170, 65 P.S. § 401, *et seq.*



3. **The constable is a police officer.** It would perhaps not be remiss to recall Sir William S. Gilbert's famous line from *The Pirates of Penzance*, "When constabulary duty's to be done, to be done, a policeman's lot is not an 'appy one!"

**TRAFFIC
AUTHORITY**

Pennsylvania Statutes

Undisputed that a Constable can direct/control traffic

36 Pa. Stat. § 2391.9 – That nothing herein contained shall restrict the authority or jurisdiction of **any peace officer** as defined in The Vehicle Code [Current through P.A. Acts 2022-54]

...

The Vehicle Code 1959 – "Peace Officer."—A sheriff, deputy sheriff, **constable**, member of the Pennsylvania State Police, State highway Patrolman or other police officer vested with authority of arrest." [Act of April 29, 1959, P.L. 58 – Repealed]

36 Pa. Stat. § 3305 – All policemen appointed by the Delaware River Joint Toll Bridge Commission ... shall have **all the powers conferred by law on police officers or constables** in the enforcement of laws and the apprehension of violators.

Title 75, § 102 – Definitions – "Police officer." A natural person authorized by law **to make arrests for violations of law**.

Title 75, § 3102. – No person shall willfully fail or refuse to comply with any lawful order or direction of:
(1) any uniformed police officer, sheriff or **constable**...

36 Pa. Stat. § 2391.9

Current through P.A. Acts 2022-54

Section 2391.9 - Regulation of ingress, egress, traffic and parking

The authorities responsible for the maintenance of limited access highways shall have exclusive jurisdiction over the control of the use of such highways, and, by the erection of appropriate signs, may control the ingress and egress of vehicles thereto, therefrom and across, the speed of vehicles thereon, and the parking of vehicles thereon and under elevated portions thereof, or may exclude any class or kind of traffic therefrom, and, by the erection of signs or the construction of curbs, painted lines, or other physical separations, provide separate traffic lanes for any class of traffic or type of vehicle: Provided, however, That nothing herein contained shall restrict the authority or jurisdiction of **any peace officer as defined in The Vehicle Code** from enforcing such control over traffic or parking as have been or may be established for limited access highways: And provided further, That the provisions of The Vehicle Code not superseded by the provisions of this act shall be and remain in full force and effect for the use and operation of motor vehicles on limited access highways. It shall be unlawful for any person to violate any parking or speed restriction or traffic control established for a limited access highway as provided herein, and any person violating such restriction or control shall, in a summary proceeding, be subject to a fine of not less than five (\$5) dollars nor more than twenty-five (\$25) dollars and costs of prosecution or imprisonment for one day for each dollar of fine and costs remaining unpaid.

1945, May 29, P.L. 1108, § 9; 1959, June 24, P.L. 483, § 1.

Referral: <https://casetext.com/statute/pennsylvania-statutes/statutes-unconsolidated/title-36-ps-highways-and-bridges/chapter-4-public-roads-in-general/limited-access-highways/section-23919-regulation-of-ingress-egress-traffic-and-parking>

...

The Vehicle Code 1959

"Peace Officer."—A sheriff, deputy sheriff, **constable**, member of the Pennsylvania State Police, State highway Patrolman or other police officer vested with authority of arrest."
[Act of April 29, 1959, P.L. 58 – Repealed]

...

36 Pa. Stat. § 3305

All policemen appointed by the Delaware River Joint Toll Bridge Commission ... shall have **all the powers conferred by law on police officers or constables** in the enforcement of laws and the apprehension of violators.

Referral: <https://casetext.com/statute/pennsylvania-statutes/statutes-unconsolidated/title-36-ps-highways-and-bridges/chapter-6-bridges/delaware-river-bridges/bridges-between-pennsylvania-and-state-of-new-jersey/additional-powers-of-commission/section-3305-policemen-empowered-to-arrest-without-warrant-general-police-powers>

...

Title 75, § 102 – Definitions

"Police officer." A natural person authorized by law **to make arrests for violations of law**.

Referral: <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=75&div=0&chpt=1&sctn=2&subsctn=0>

...

Title 75, § 3102. Obedience to authorized persons directing traffic.

No person shall willfully fail or refuse to comply with any lawful order or direction of:
(1) any uniformed police officer, sheriff or **constable** or, in an emergency, a railroad or street railway police officer;

Referral: <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=75&div=0&chpt=31&sctn=2&subsctn=0>

...

**ALLEN
CASE**

Superior Court of Pennsylvania

Submitted December 17, 2018

COMMONWEALTH v. ALLEN No. 1203 MDA 2018.

“Our jurisprudence recognizes, therefore, that the common law confers arrest powers upon constables for in-presence felonies or breaches of the peace.

...

Confronted with such conduct, the constables here acted within their common law powers when they walked to the driver's side window, detained an ostensibly compromised Appellant in a safe manner, and immediately called the proper authorities to investigate the incident. Accordingly, we conclude there is no merit to Appellant's argument that his detention at the hands of Constables Metcalf and Gates until the Pennsylvania State Police arrived amounted to a violation of his Fourth Amendment rights...”

OPINION BY STEVENS, P.J.E.:

Appellant, Mark Amos Allen, appeals from the judgment of sentence entered in the Court of Common Pleas of Adams County. Herein, Appellant contends the trial court erroneously denied his motion to suppress evidence of his Driving Under the Influence of alcohol ("DUI") obtained after a constable had detained him until the Pennsylvania State Police arrived to initiate the DUI investigation. We affirm.

The trial court submits as a Pa.R.A.P. 1925(a) opinion its "Opinion on Defendant's Motion for Suppression," which sets forth enumerated findings of fact made after the court's consideration of evidence offered at the February 15, 2018, suppression hearing:

1. Constable J. Ryan Metcalf is a full time state constable elected in the Borough of New Oxford and has been a state constable for [eight] years.
2. Constable Metcalf's responsibilities include the service of judicial process in the form of civil process for landlord/tenant actions, the service of subpoenas, and the arrest of individuals by warrant. Constable Metcalf is permitted to serve arrest warrants anywhere within the Commonwealth of Pennsylvania.
3. On April 24, 2017, at approximately 8:00 p.m., Constable Metcalf and Constable Gates [from Erie County] were present at 2682 York Road, Straban Township, Adams County, Pennsylvania for the execution of arrest warrants for two individuals.
4. Constable Metcalf and Constable Gates were in the living room of the residence at 2682 York Road[, which fronts Pennsylvania State Route 30], speaking with the occupant of the residence, Lorraine Witmer, concerning the arrest warrants. Constable Metcalf observed through a living room window a vehicle exit Route 30 at a high rate of speed, proceed airborne over the embankment, and enter the yard of the residence at 2682 York Road. The vehicle travelled to the rear of the residence through the yard and stopped between the residence and a trailer located in the rear of the residence.
5. Constable Metcalf and Constable Gates went to the rear of the residence and observed Defendant [hereinafter Appellant] in the driver's seat. There were no other passengers in the vehicle.
6. As Constable Metcalf approached the vehicle, Appellant exited the vehicle and Constable Metcalf smelled a strong odor of alcohol and an odor of marijuana. Constable Metcalf observed Appellant to be confused, [slurring his speech, and] had balance issues [such that it was] the Constable's opinion Appellant was manifestly under the influence of alcohol.
7. At 8:04 p.m., Constable Metcalf contacted the Pennsylvania State Police and was advised a PSP Trooper would have an extended estimated time of arrival because of other incidents.
8. Constable Metcalf contacted the on-call Adams County Assistant District Attorney, Attorney Yannetti, who advised Constable Metcalf to detain Appellant for further investigation for suspicion of DUI by the Pennsylvania State Police.
9. Constable Metcalf detained Appellant and placed him in the rear of his vehicle. Constable Metcalf testified that Appellant was not free to leave.
10. Constable Metcalf did not [give] Appellant ... his Miranda warnings after Constable Metcalf detained him while awaiting the arrival of the Pennsylvania State Police.
11. On April 24, 2017 at 9:26 p.m., Trooper Haun with the Pennsylvania State Police arrived at 2682 York Road and handled the criminal investigation on behalf of the Pennsylvania State Police.
12. Ultimately, Trooper Haun charged Appellant with several counts of driving under the influence of alcohol or controlled substances and summary traffic violations.

Trial Court Opinion, 3/13/18, at 1-3.

On March 13, 2018, the court granted in part and denied in part Appellant's motion to suppress evidence obtained from what he had argued was Constable Metcalf's unlawful detention of him. Specifically, the court granted Appellant's motion to suppress statements made by Appellant during his conversation with Constable Metcalf, but it denied Appellant's motion to suppress all other DUI-related evidence subsequently acquired by the Pennsylvania State Police.

The case proceeded to a non-jury trial, which concluded with a guilty verdict on one count of DUI. On June 29, 2018, the court sentenced Appellant to a county intermediate punishment sentence of 60 months, six months of which were to be served in a restrictive setting. This timely appeal follows.

Appellant presents one question for our consideration:

Was Appellant unlawfully detained when two constables initially arrested him for an alleged breach of the peace, but then held him in a caged vehicle for an additional hour and a half for the express purpose of having police investigate a suspected DUI, at the express direction of the District Attorney's Office?

Appellant's brief, at 4.

The standard of review for the denial of a motion to suppress evidence is as follows:

We may consider only the Commonwealth's evidence and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error. An appellate court, of course, is not bound by the suppression court's conclusions of law.

Commonwealth v. Livingstone, [174 A.3d 609](#), 619 (Pa. 2017) (citation omitted). Additionally, "our scope of review from a suppression ruling is limited to the evidentiary record that was created at the suppression hearing." *Commonwealth v. Rapak*, [138 A.3d 666](#), 670 (Pa.Super. 2016) (citation omitted).

In challenging the partial denial of his motion to suppress, Appellant essentially maintains that the suppression court deprived him of his Fourth Amendment rights when it declined to suppress evidence obtained after constables unlawfully detained him for what amounted to nothing more than a violation of the Motor Vehicle Code.¹ To support this argument, he relies upon *Commonwealth v. Roose*, [551 Pa. 410](#), [710 A.2d 1129](#) (1998), where the Pennsylvania Supreme Court held that constables lacked authority to enforce the Motor Vehicle Code. We find *Roose*, however, to be factually inapposite, as it involved a situation where a constable driving his private vehicle executed a traffic stop after he observed what he believed to be an illegal left turn committed by the defendant.

In contrast, the facts of the present case centered around the constables' observation of, and response to, a single car accident, where a car traveling at a high rate of speed dangerously left the roadway, went airborne over an embankment, and careened well into the back portion of a residential yard before coming to a stop just short of a trailer located behind the home. N.T. at 8-10. A visibly dazed and ostensibly intoxicated² Appellant remained behind the wheel with the engine running when Constables Metcalf and Gates walked to the driver's side window to encounter him. N.T. at 10.

Confronted with these facts, it was Constable Metcalf's testimony that he had

observed a breach of the peace and a commission of a crime in my presence, and I placed that in the hands of the appropriate primary first due [sic] law enforcement agency.... I knew I had the authority to arrest him if for no other reason than for public drunkenness and for obvious breach of peace. You know, the individual had committed an act that would tend to place other persons in danger that I observed.

N.T. at 21, 20.

As such, the Commonwealth contends the constables' detention of Appellant was in response to a witnessed breach of the peace, which brings this matter under the rationale expressed in *Commonwealth v. Taylor*, [450 Pa.Super. 583](#), [677 A.2d 846](#) (1996). *Taylor* inquired into a constable's authority to arrest and search incident to arrest when he viewed what he believed to be illegal narcotics in the possession of the defendant during an eviction.

In vacating the trial court's order suppressing all evidence, this Court conducted a comprehensive review of "the nature of power possessed by constables at common

[206 A.3d 1127]

law" and held that "overwhelming authority supports the proposition that constables possessed the power at common law to make warrantless arrests for felonies and breaches of the peace." *Id.* at 850, 851. "Furthermore," we continued, "complying with the mandate of *Leet*,^[3] we have examined the statutes and found no provision abrogating that power. Hence, since appellee's possession of a controlled substance with intent to deliver constitutes a felony... we are unable to escape the conclusion that [the constable] was empowered to arrest appellee." *Id.* at 851.⁴

Our jurisprudence recognizes, therefore, that the common law confers arrest powers upon constables for in-presence felonies or breaches of the peace. As the case *sub judice* involves no felony, we examine whether Appellant's conduct occurring within the presence of the constables constituted a "breach of the peace" as understood at common law.

Explicit guidance as to what acts represent "breaches of the peace" is limited in our decisional law.⁵ Indeed, in *Commonwealth v. Marconi*, [619 Pa. 401](#), [64 A.3d 1036](#) (2013), the Pennsylvania Supreme Court alluded to the uncertain scope of this category of offenses in its discussion of sheriffs' and deputies' arrest authority for Vehicle Code violations. Noting that the Court had not previously identified violations that would qualify as authority-triggering "breaches of the peace," the *Marconi* Court described the "breach-of-the-peace litmus" as "undefined" and "heavily context laden." *Id.* at 1049 n.5 (criticizing precedent's "loose incorporation of undefined peacekeeping powers as the rational litmus" as the cause of uncertainties regarding sheriffs' residual common law arrest authority under the Vehicle Code).

Marconi further branded as an "oversimplification" a prior dissenting opinion of this Court that suggested all Vehicle Code violations represented breaches of the peace. *Id.* at 1049 n.6 (addressing *Com v. Leet*, [401 Pa.Super. 490](#), [585 A.2d 1033](#), 1045 (1991) (Cirillo, J.

dissenting)). In making this point, however, the Court may have lent some insight into the contours of a breach of the peace, as it chose a Vehicle Code violation ostensibly involving only the safety of the offending party as an example

[206 A.3d 1128]

of a violation not readily within the ambit of the term "breach of the peace." Specifically the Court stated "there are Vehicle Code violations constituting summary offenses which do not readily comport with the conception of a breach of the peace, for example, the failure to employ a seat belt.... *cf. Atwater*[*v. City of Lago Vista*], 532 U.S. [318,] 327 n.2, 121 S.Ct. 1536, 149 L.Ed.2d 549 [(2001)] (assuming, albeit without definitively deciding, that a seatbelt violation is not a *per se* breach of the peace)." *Id.*

Notwithstanding the lack of definitive guidance from the Pennsylvania Supreme Court, our jurisprudence recently addressed the question of what amounts to a breach of the peace as contemplated in our common law. Specifically, in *Commonwealth v. Copenhagen*, [200 A.3d 956](#), 2018 Pa.Super. 333 (2018), we held that a sheriff's deputy possessed authority to stop a defendant for the summary violation of driving with an expired registration sticker, as we rejected the defendant's argument that such a violation was not a breach of the peace.

In reaching this decision, we found instructive our treatment of the "breach of the peace" question in *Commonwealth v. Lockridge*, [781 A.2d 168](#), 169 (Pa.Super. 2001), *aff'd on other grounds*, 570 Pa. 510, [810 A.2d 1191](#) (2002), where the defendant argued that a sheriff's deputy lacked authority to issue a citation for driving with a suspended license because the Vehicle Code violation did not amount to a breach of the peace. We rejected the defendant's argument, as follows:

[The defendant's] interpretation of Leet illogically limits the authority of a trained deputy to issuing citations for only those violations of the Vehicle Code that involve behavior or action similar to those actions prohibited under the disorderly conduct provision of the Crimes Code. Were we to interpret Leet as narrowly as [the defendant] suggests, a deputy would be prohibited from enforcing [S]ection 1543(b) of the Vehicle Code, even if violated in his presence, because the operation of a motor vehicle while under suspension does not necessarily involve, 'on any part of the driver, any intent to cause public inconvenience, annoyance, or alarm, or recklessly create risks thereof.' 18 Pa.C.S.A. § 5503. Such an interpretation of Leet defies logic, and we find [the defendant's] 'breach of the peace' argument devoid of merit.

Id. at 170 (citation and footnote omitted).

On appeal, the Supreme Court affirmed our decision, but did so on a different basis. The Supreme Court emphasized that "[t]he power to arrest, as *Leet* instructs us, emanates from the common law. The filing of a citation, however, concerns a process that is among those set out in the Pennsylvania Rules of Criminal Procedure for commencing a summary action." *Lockridge*, 810 A.2d at 1194. Thus, the Supreme Court found that our Rules of Criminal Procedure authorized the deputy sheriff to file the citation charging the defendant with a 75 Pa.C.S. § 1543(b) violation. *Id.* at 1196.

Even though the Supreme Court affirmed our decision in *Lockridge* on other grounds, *Copenhagen* found our analysis in that case salutary in determining whether the violation of driving with an expired registration sticker amounted to a breach of the peace justifying a stop:

Although the Supreme Court affirmed our decision in *Lockridge* on other grounds, and noted that it was not necessary for the Superior Court to pass upon [the defendant's] contention regarding a breach of the peace, we find our analysis in that case to be instructive. In particular, we described the defendant's breach of the peace argument in *Lockridge* to be unconvincing and his interpretation of the Leet decision faulty. *Lockridge*, 781 A.2d at 169. We opined that the defendant's interpretation of Leet illogically limits the authority of a trained deputy to issuing citations for only those violations of the Vehicle Code that involve behavior or action similar to those actions prohibited under the disorderly conduct provision of the Crimes Code. *Id.* at 170. We also stated unequivocally that the defendant's interpretation of Leet defies logic and found its breach of the peace argument to be devoid of merit. *Id.* Given this guidance — where we determined that driving while under suspension is a breach of the peace — we cannot say in Appellant's case that driving with an expired registration is not. Accordingly, we are not persuaded that Appellant's first issue merits relief.

Copenhagen, 2018 PA Super 333 at *4, [200 A.3d 956](#).

In light of this Court's understanding of what constitutes a breach of the peace for purposes of reviewing deputy sheriffs' authority to conduct a Fourth Amendment stop,⁶ it is clear that the patently disruptive, intrusive, and dangerous nature of Appellant's underlying conduct clearly aligns with the "breach of the peace" concept in this context.

Confronted with such conduct, the constables here acted within their common law powers when they walked to the driver's side window, detained an ostensibly compromised Appellant in a safe manner, and immediately called the proper authorities to investigate the incident.

Accordingly, we conclude there is no merit to Appellant's argument that his detention at the hands of Constables Metcalf and Gates until the Pennsylvania State Police arrived amounted to a violation of his Fourth Amendment rights requiring suppression of all DUI evidence subsequently obtained.

Judgment of sentence affirmed.

FootNotes

* Former Justice specially assigned to the Superior Court.

1. We agree that Constable Metcalf effected a Fourth Amendment seizure of Appellant.
2. Constable Metcalf testified that his training for detection of illegal substances and identification of impairment and intoxication was current, as he had most recently completed "Institute for Law Enforcement Education" update courses offered by the Adams County Department of Emergency Services. N.T. at 12. For present purposes, this testimony is relevant not to the question of whether Appellant was DUI but to the reasonableness of Constable Metcalf's belief that he had grounds to arrest Appellant for breach of the peace and public drunkenness.
3. *Commonwealth v. Leet*, [537 Pa. 89](#), [641 A.2d 299](#), 301 (1994) (holding "that the common law powers of the sheriff include the power to enforce the motor vehicle code, and that such powers have not been abrogated by statute or otherwise.").
4. Contrary to Appellant's position, decisional law of this Commonwealth did not render Constables Metcalf and Gates powerless to intervene merely because Appellant's conduct had involved the operation of a motor vehicle. Taken to its logical conclusion, Appellant's argument, if accepted, would mean a constable or private citizen who physically removes a reckless driver from a stationary vehicle to protect the immediate community does so to the detriment of any ensuing Vehicle Code-based investigation.

Indeed, such an absolute proscription would represent an overly broad application of *Roose* to situations like the one at bar, where a constable's detention of a stationary driver who has left the roadway represented not the enforcement of the Vehicle Code but a response to an act one could reasonably expect to excite violent resentment, and where the perceived breach of peace was ongoing to the extent that a demonstrably reckless driver still behind the wheel with the engine running may attempt to resume driving to the disturbance of the community.
5. Black's Law Dictionary defines the term as the criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise. BREACH OF THE PEACE, Black's Law Dictionary (10th ed. 2014). As discussed *infra*, however, recent jurisprudence of this Court has adopted a more expansive understanding of the term.
6. In view of relevant jurisprudence, we discern no basis for applying a different scope to the concept of "breach of the peace" depending on whether a sheriff's, a deputy's, a constable's, or a private citizen's authority to effect a stop or arrest is under review. Indeed, in *Leet*, the Supreme Court observed that a sheriff's authority to arrest for a breach of the peace was coextensive with that of a private citizen. *See Marconi*, 64 A.3d at 1041 (Noting "we clarified that *Leet* acknowledged nothing more than sheriff's circumscribed authority to arrest for breaches of the peace and felonies committed in their presence, power `no different from that of a private citizen.") (quoting *Commonwealth v. Dobbins*, [594 Pa. 71](#), [934 A.2d 1170](#) (2007)).

MILLER
CASE

United States District Court, W.D. Pennsylvania.

March 22, 2012

GALLUZE v. MILLER Civil Action No. 10-836.

“Similarly, the court of appeals in *County of Allegheny v. Berg*, 219 F.3d 261 (3d Cir. 2000), and *Abbott v. Latshaw*, 164 F.3d 141 (3d Cir. 1998), and the district court in *Maloney v. City of Reading*, 04-cv-5318, 2006 WL 305440 (E.D. Pa. Feb. 8, 2006), treated constables as police officers for purpose of § 1983 claims. Finally, Pennsylvania Rule of Criminal Procedure 103 defines a police officer as “any person who is by law given the power to arrest” when acting within the scope of the person's employment.” Pa. R. Crim. P. 103.

The court concludes that in the context of those cases a constable is a police officer.”

MEMORANDUM OPINION

JOY FLOWERS CONTI, District Judge.

Introduction

Pending before the court is a motion for summary judgment filed by defendant William R. Miller ("Miller" or "defendant") (ECF No. 30) with respect to all claims asserted by plaintiff Jennifer Galluze ("Galluze" or "plaintiff"). Plaintiff filed a cross-motion for partial summary judgment with respect to her Fourth Amendment claims. ECF No. 35. Plaintiff asserts claims for violations of her rights under the First, Fourth and Fourteenth Amendments to the United States Constitution and a host of state law claims. ECF No. 1. ¹ After considering the statements of facts and the other submissions of the parties and the applicable standards, defendant's motion for summary judgment will be granted with respect to the intentional and negligent infliction of emotional distress claims and denied in all other respects and plaintiff's motion for partial summary judgment will be denied.

Background

This case stems from an incident that occurred on June 21, 2009, at the Brownsville Drive-In Theater, which is located in Fayette County, Pennsylvania. ECF No. 32 at 1; ECF No. 41 at 1. Plaintiff was at the drive-in to pick up some kittens. Id. Tom Clark, Jr. ("Mr. Clark"), one of the owners of the drive-in asked plaintiff to leave the property. Id. There was some "screaming" and "yelling" between plaintiff and Mr. Clark. Id. Defendant, who was at the drive-in watching a movie with his family, approached the scene. ECF No. 32 at 2; ECF No. 41 at 2. Plaintiff testified that defendant approached her and stated he was a constable. Id. During this interaction, defendant showed her his badge. Id. The evidence is conflicting about what happened next.

Defendant asked plaintiff to leave the premises. ECF No. 33-3 at 38, 45. Plaintiff indicated that she intended to report the incident to the Humane Society. Id. at 38. Plaintiff testified that, while she was attempting to leave the property, defendant, for no reason, hit her hand with his closed fist and proceeded to handcuff her. Id. After being handcuffed, plaintiff complained that the cuffs were too tight she could not breathe and called him a "wannabe." Id. at 46. "[W]hen [she] called him that he lifted up and pushed down on the handcuffs." Id. Plaintiff testified she never attempted to strike defendant. Id.

Defendant testified that he saw plaintiff coming toward him with her hand in the air. He thought she was about to strike him. ECF No. 33-1 at 21-22. Defendant felt threatened. Id. at 23. As her hand came forward, defendant side stepped and handcuffed her. Defendant testified that he did so for his own safety and for the safety of plaintiff. Id. at 22. Defendant stated she was resisting the application of the handcuffs and he could not double lock the handcuffs. Id. While defendant acknowledged that plaintiff was complaining about the handcuffs being too tight, he explained that it was only because she was struggling. Id. at 24, 40. Defendant did not take the handcuffs off "due to the safety of the situation." Id. at 41.

Mr. Charlie Perkins ("Mr. Perkins"), an eyewitness, testified that plaintiff was screaming during the interaction with both Mr. Clark and defendant. ECF No. 33-2 at 39. He also testified that plaintiff looked "outraged" and that "she was going to hit him, him being [defendant]." Id. at 41. Next, defendant handcuffed her. Id. at 42.

As a result of this incident, plaintiff "was charged and convicted of one summary offense of disorderly conduct and to pay a \$25.00 dollar fine." ECF No. 49 at 4.

Standard of Review

A motion for summary judgment is governed by Federal Rule of Civil Procedure 56, which provides in relevant part:

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

...

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

FED. R. CIV. P. 56(a), (c)(1).

The Court of Appeals for the Third Circuit instructed in *Marten v. Godwin*, [499 F.3d 290](#) (3d Cir. 2007), that Rule 56 of the Federal Rules of Civil Procedure:

[M]andates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Marten, 499 F.3d at 295 (quoting *Celotex Corp. v. Catrett*, [477 U.S. 317](#), 322-23 (1986)).

An issue of material fact is in genuine dispute if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, [477 U.S. 242](#), 248 (1986); see also *Doe v. Abington Friends Sch.*, [480 F.3d 252](#), 256 (3d Cir. 2007) ("A genuine issue is present when a reasonable trier of fact, viewing all of the record evidence, could rationally find in favor of the non-moving party in light of his burden of proof.") (citing *Anderson*, 477 U.S. at 248; *Celotex Corp.*, 477 U.S. at 322-23)).

[W]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'

Scott v. Harris, 550 U.S. 372, 380 (2007) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, [475 U.S. 574](#), 586-87 (1986)).

In deciding a summary judgment motion, a court must view the facts in the light most favorable to the nonmoving party and must draw all reasonable inferences, and resolve all doubts in favor of the nonmoving party. See *Woodside v. Sch. Dist. of Phila. Bd. of Educ.*, [248 F.3d 129](#), 130 (3d Cir. 2001); *Doe v. Cnty. of Centre, Pa.*, [242 F.3d 437](#), 446 (3d Cir. 2001); *Heller v. Shaw Indus., Inc.*, [167 F.3d 146](#), 151 (3d Cir. 1999). A court must not engage in credibility determinations at the summary judgment stage. See *Simpson v. Kay Jewelers, Div. of Sterling, Inc.*, [142 F.3d 639](#), 643 n.3 (3d Cir. 1998).

Discussion

I. Defendant's motion for summary judgment

A. Plaintiff brought three claims against defendant pursuant to 42 U.S.C. § 1983: ² (i) illegal arrest, (ii) excessive force, and (iii) First Amendment retaliation.

To successfully establish a claim under § 1983, a plaintiff must demonstrate that a person or entity intentionally deprived her of a federally protected right. See *Bd. of the Cnty. Comm'rs of Bryant Cnty. v. Brown*, 520 U.S. 397, 404 (1997). A plaintiff is required to establish two prongs to prevail on a claim under § 1983: (1) deprivation of a federal right and (2) that the person who has deprived [her] of that right acted under color of state or territorial law. See *Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

Whiting v. Bonazza, No. 09-cv-1113, 2011 WL 500797, at *4 (W.D. Pa. Feb. 10, 2011).

Each of the asserted federal claims will be addressed.

(i) Illegal arrest claim

Plaintiff argued that she was unlawfully arrested by defendant in violation of the Fourth Amendment because he, as a constable, did not have the authority to do so and, in any event, did not have probable cause to arrest her.

Defendant argued that he, as a constable, had the authority to arrest her because she was in the process of committing an aggravated assault against him, a felony offense under Pennsylvania law. In support, defendant relied on *Commonwealth v. Taylor*, [677 A.2d 846](#) (Pa. Super. Ct. 1996), for the proposition that "constables possess the common law powers to conduct warrantless arrests for felonies and breaches of the peace. Since those powers have not been abrogated by our statutory law, they are retained by the constables of this Commonwealth." *Id.* at 852. He also cited 44 PA. CONS. STAT. § 7158 (relating to the power of arrest of a constable of a borough).³ Defendant, in the alternative, argued that even in the absence of his authority as a constable, he, as a private citizen, had the power to arrest plaintiff because she was about to commit a felony in his presence. ECF No. 33 at 4-5. Defendant asserted that plaintiff's conduct gave defendant probable cause to arrest her and that no excessive force was used to arrest her. *Id.* at 5-13.

In response, plaintiff argued that defendant's motion for summary judgment should be denied because she satisfied both elements of a § 1983 claim. Specifically, plaintiff argued that defendant was acting under color of state law and that, "[b]ased upon the undisputed material facts," defendant's conduct deprived her of rights protected under the Constitution. ECF No. 40 at 3.

According to plaintiff, defendant's conduct was unlawful because defendant did not have the authority to arrest plaintiff. While plaintiff did not dispute the validity of *Taylor*, she argued that *Taylor* is not applicable here because she was charged and convicted of a summary offense (disorderly conduct), not a felony. Regarding section 7158, plaintiff argued that it is not applicable here because defendant was not a constable of any borough, but only a constable for the South Strabane Township, Washington County, and the offense occurred in Redstone Township, Fayette County.⁴

In his reply defendant argued that "Plaintiff assumes without offering analysis that Defendant was acting under color of state law." (ECF No. 44 at 1.) Defendant noted:

There was no attempt by Constable Miller to do anything other than to assist the property owner in having her leave the premises. There was no threat of citation or arrest, no brandishing of a weapon or even his handcuffs, nor any other actions on his part that could qualify as acting under color of state. . . . As the victim of an aggravated assault, based on his common law rights as a citizen and in self-defense, [defendant] placed [plaintiff] into handcuffs for that violation and for his own protection.

(ECF No. 44 at 1-2.)⁵ Defendant's argument that he was not acting under color of state law is untenable and no reasonable jury could reach that conclusion. The court of appeals in *Barna v. City of Perth Amboy*, [42 F.3d 809](#) (3d Cir. 1994), stated:

It is [also] clear that under 'color' of law means under 'pretense' of law. [*Screws v. United States*, 325 U.S. 91, 111 (1945)]. Thus, one who is without actual authority, but who purports to act according to official power, may also act under color of state law. In *Griffin v. Maryland*, the Supreme Court held that a deputy sheriff employed by a private park operator acted under color of state law when he ordered the plaintiff to leave the park, escorted him off the premises, and arrested him for criminal trespass. *Griffin v. Maryland*, 378 U.S. 130, 135, 84 S.Ct. 1770, 1772-73, 12 L.Ed. 2d 754 (1964) (analyzing state action necessary for a claim under the Equal Protection Clause of the Fourteenth Amendment). While the deputy sheriff was in actuality acting as a private security guard and as agent of the park operator rather than as agent of the state, he wore a sheriff's badge and consistently identified himself as a deputy sheriff rather than as an employee of the park, and consequently purported to exercise the authority of a deputy sheriff. *Id.* at 135, 84 S.Ct. at 1772. The Court concluded that the privately employed deputy sheriff had been acting as a state actor, stating:

If an individual is possessed of state authority and purports to act under that authority, his action is state action. It is irrelevant that he might have taken the same action had he acted in a purely private capacity.

Id. In this same vein, off-duty police officers who purport to exercise official authority will generally be found to have acted under color of state law. Manifestations of such pretended authority may include flashing a badge, identifying oneself as a police officer, placing an individual under arrest, or intervening in a dispute involving others pursuant to a duty imposed by police department regulations. See, e.g., *Rivera v. La Porte*, 896 F.2d 691, 696 (2d Cir.1990) (identification as a peace officer, arrest of plaintiff, and use of police car); *Lusby v. T.G. & Y. Stores, Inc.*, 749 F.2d 1423 (10th Cir.1984) (flashing of police badge and identification as police officer working as security guard), vacated on other grounds, 474 U.S. 805, 106 S.Ct. 40, 88 L.Ed.2d 33 (1985), adhered to on remand, 796 F.2d 1307 (10th Cir.), cert. denied, 479 U.S. 884, 107 S.Ct. 275, 93 L.Ed.2d 251 (1986); *Stengel v. Belcher*, 522 F.2d 438, 441 (6th Cir.1975), cert. dismissed, 429 U.S. 118, 97 S.Ct. 514, 50 L.Ed.2d 269 (1976) (intervening in barroom brawl).

On the other hand, a police officer's purely private acts which are not furthered by any actual or purported state authority are not acts under color of state law. See *Delcambre v. Delcambre*, 635 F.2d 407, 408 (5th Cir.1981) (holding that alleged assault by on-duty police chief at police station did not occur under color of state law because altercation with the plaintiff, defendant's sister-in-law, arose out of a personal dispute and defendant neither arrested nor threatened to arrest the plaintiff); see also *D.T. v. Independent School Dist. No. 16*, 894 F.2d 1176 (10th Cir.) (finding sexual molestation of students by public school teacher/coach that occurred on an excursion unconnected to school activities during school vacation period when teacher was not employed by the school district did not occur under color of state law), cert. denied, 498 U.S. 879, 111 S.Ct. 213, 112 L.Ed.2d 172 (1990). While a police-officer's use of a state-issue weapon in the pursuit of private activities will have furthered the § 1983 violation in a literal sense, courts

generally require additional indicia of state authority to conclude that the officer acted under color of state law. Compare *Bonsignore v. City of New York*, 683 F.2d 635 (2d Cir.1982) (holding that officer who used police handgun to shoot his wife and then commit suicide did not act under color of state law even though he was required to carry the police gun at all times) with *Stengel v. Belcher*, 522 F.2d at 441 (finding evidence supported determination of under color where off-duty officer intervened in barroom brawl as required by relevant police department regulations); *United States v. Tarpley*, 945 F.2d 806, 809 (5th Cir.1991) (finding requirement under color of state law met where off-duty deputy sheriff assaulted wife's alleged ex-lover in a private vendetta but identified self as police officer, used service revolver, and intimated that he could use police authority to get away with the paramour's murder), cert. denied, 504 U.S. 917, 112 S.Ct. 1960, 118 L.Ed.2d 562 (1992).

Id. at 816-17 (footnote omitted).

Under the circumstances of the case, it is undisputed that defendant intervened in the dispute between the owner of the drive-in and plaintiff, flashed his badge, identified himself as constable, and placed the plaintiff under arrest. As such, a reasonable jury could find defendant acted under color of state law. ⁶

Regarding the authority of a constable to make a warrantless arrest, the only issues raised by plaintiff are: 1) defendant lacked authority because she was not charged with or convicted of a felony offense; and 2) defendant did not have probable cause to believe she was about to commit a felony.

Despite the repeated attempts by plaintiff to emphasize that defendant did not have the authority to arrest her for a summary offense, the inquiry whether the arrest was supported by probable cause must be determined on the facts available to the officer at the moment of arrest and it is irrelevant what offense she was ultimately charged with or convicted of. The court of appeals in *Wright v. City of Philadelphia*, [409 F.3d 595](#) (3d Cir. 2005), stated:

An arrest was made with probable cause if at the moment the arrest was made ... the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964) (citations omitted). In other words, the constitutional validity of the arrest does not depend on whether the suspect actually committed any crime. *Johnson v. Campbell*, 332 F.3d 199, 211 (3d Cir. 2003). Importantly for this case, it is irrelevant to the probable cause analysis what crime a suspect is eventually charged with, *Barna v. City of Perth Amboy*, 42 F.3d 809, 819 (3d Cir.1994) (Probable cause need only exist as to any offense that could be charged under the circumstances.), or whether a person is later acquitted of the crime for which she or he was arrested, *DeFillippo*, 443 U.S. at 36, 99 S.Ct. 2627; see also *Devenpeck*, 125 S.Ct. at 594 (The rule that the offense establishing probable cause must be 'closely related' to, and based on the same conduct as, the offense identified by the arresting officer at the time of arrest is inconsistent with [] precedent.).

Id. at 602.

Similarly, in *Barna*, the court of appeals held:

The test for an arrest without probable cause is an objective one, based on the facts available to the officers at the moment of arrest. *Beck v. Ohio*, 379 U.S. 89, 96, 85 S.Ct. 223, 228, 13 L.Ed.2d 142 (1964); *Edwards v. City of Philadelphia*, 860 F.2d 568, 571 n. 2 (3d Cir.1988). Evidence that may prove insufficient to establish guilt at trial may still be sufficient to find the arrest occurred within the bounds of the law. *Henry v. United States*, 361 U.S. 98, 102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134 (1959). As long as the officers had some reasonable basis to believe Mr. Barna had committed a crime, the arrest is justified as being based on probable cause. Probable cause need only exist as to any offense that could be charged under the circumstances. *Edwards v. City of Philadelphia*, 860 F.2d at 575-76.

Barna, 42 F.3d at 819 (emphasis added).

Thus, the relevant time for purposes of the probable cause analysis is the time of the arrest. Plaintiff's argument to the contrary is without merit. Here, defendant testified that he arrested her because she was about to strike him. Once again, however, the evidence relating to the events leading to the arrest, including the severity of the bodily injury attempted, are in dispute. As noted, at this stage, the court cannot make credibility determinations and must view the facts in the most light most favorable to the nonmoving party. Applying this standard, the motion filed by defendant for summary judgment cannot be granted.

Finally, plaintiff argued that no felony could have been involved because the state statute relating to an aggravated assault was no applicable. She asserted that 18 PA. CONS. STAT. § 2702 "only protects the law enforcement officer, constable, or other enumerated person who is acting in the performance of duty. Defendant had no authority or jurisdiction at the time of the accident and was not acting pursuant to any lawful duty." (ECF No. 40 at 9.)

Section 2702 of the Pennsylvania Crimes Code, in relevant part, provides as follows:

(a) Offense defined.—A person is guilty of aggravated assault if he:

...

(2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c) or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty;

(3) attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty;

...

(6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury; or

...

(b) Grading.—Aggravated assault under subsection (a)(1) and (2) is a felony of the first degree. Aggravated assault under subsection (a)(3), (4), (5), (6) and (7) is a felony of the second degree.

(c) Officers, employees, etc., enumerated.— The officers, agents, employees and other persons referred to in subsection (a) shall be as follows:

...

(24) A constable

....

18 PA. CONS. STAT. § 2702.

As noted above, plaintiff argued that defendant had no authority or jurisdiction at the time of the accident and was not acting pursuant to any lawful duty. Whether defendant had the authority to arrest under the circumstances (*i.e.*, the legality of the arrest) is irrelevant to the issue whether he was acting in the performance of his duty. See, e.g., *Commonwealth v. Schwenk*, [777 A.2d 1149](#) (Pa. Super. Ct. 2001); ⁷ *In re Barry W.*, [621 A.2d 669](#) (Pa. Super. Ct. 1993); ⁸ *Commonwealth v. Novak*, [564 A.2d 988](#) (Pa. Super. Ct. 1989). ⁹ Here, "in the performance of duty" requires that defendant was acting as a constable at the relevant times. As noted above, defendant was acting as a constable as he flashed his badge, announced he was a constable and handcuffed plaintiff. Importantly, the mere fact that defendant might have violated state law (acting beyond the scope of his jurisdiction or making an otherwise illegal arrest), does not necessarily establish a Fourth Amendment violation. *United States v. Laville*, [480 F.3d 187](#), 191-92 (3d Cir. 2007) (holding, *inter alia*, that the reasonableness of an arrest under the Fourth Amendment does not depend on whether it was lawful under state law and that the validity of an arrest under state law is at most a factor that a court may consider in assessing the broader question of probable cause). ¹⁰ In any event, a jury will need to assess the evidence relating to the events leading to the arrest and the arrest itself. There are genuine issues of material fact in dispute and the court cannot grant summary judgment in defendant's favor with respect to this claim.

(ii) Excessive force claim

Plaintiff argued that defendant never loosened the handcuffs and that the handcuffs were tight and would have been tight for ten or fifteen minutes until the police arrived. ECF No. 40 at 13. In her testimony, Plaintiff stated that the handcuffs were so tight she could not breathe. Defendant, in turn, argued that there is no evidence of excessive force and the handcuffing was in self-defense to prevent an assault that was occurring and future assaults. ECF No. 44 at 4.

Excessive force claims (applicable against the States by the Due Process Clause of the Fourteenth Amendment, and enforced under § 1983) are analyzed under the Fourth Amendment. *Rodriguez v. Passaic*, [730 F.Supp. 1314](#), 1320 (D. N.J. 1990). "[A]ll claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigation stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard. . . ." *In re City of Phila. Litig.*, [49 F.3d 945](#), 962 (3d Cir. 1995) (quoting *Graham v. Connor*, [490 U.S. 386](#), 395 (1989)).

A claim for excessive force must involve a "seizure" that was unreasonable. *Kopec v. Tate*, [361 F.3d 772](#), 776 (3d Cir. 2004). "[A] suspect is not seized until he submits to the police's show of authority or the police subject him to some degree of physical force." *Abraham v. Raso*, [183 F.3d 279](#), 291 (3d Cir. 1999). The reasonableness standard under the Fourth Amendment "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. "02bbNot every push or shove, even if it may seem unnecessary in the peace of a judge's chambers,' violates the Fourth Amendment." *Graham*, 490 U.S. at 396 (quoting *Johnson v. Glick*, [481 F.2d 1028](#), 1033 (2d Cir. 1973)). Other factors to consider "include 'the duration of the [officer's] action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may

be armed, and the number of persons with whom the police officers must contend at one time." *Couden v. Duffy*, [446 F.3d 483](#), 497 (3d Cir. 2006) (quoting *Sharrar v. Felsing*, [128 F.3d 810](#), 822 (3d Cir.1997)).

The preliminary issue to be decided here is whether a constable is a police officer for purposes of this claim. While there is some authority that could be construed as opposed to such a conclusion (see *Roose*, 690 A.2d at 242-43, which relied, in part, on the definition of "police officer" in the Pennsylvania Crimes Code ¹¹), the majority of authorities that this court could find on this matter suggest otherwise.

In *Taylor*, the Superior Court of Pennsylvania noted:

The Supreme Court's statement that a constable is a peace officer was merely express recognition of a well-settled legal principle. See e.g., *Black's Law Dictionary* (5th ed. 1979) (defining peace officers to include sheriffs and their deputies, constables ... and other officers whose duty it is to enforce the peace.), and 6A C.J.S. *Arrest*, § 17 (Justices, sheriffs, coroners, constables and watchmen are recognized peace officers at common law.). Lastly, 16 P.S. § 1216, *Peace officers; powers and duties*, expressly applies to constables. Moreover, following its statement that a constable is a peace officer, the Court inserted a footnote which provides, [t]he constable is a police officer. In *Re Act 147 of 1990*, 528 Pa. 460, 471, 598 A.2d 985, 990 (1991). Instantly, the Commonwealth asserts that this statement constitutes Supreme Court recognition that constables possess the same authorities and duties as police officers under all circumstances. (Appellant's brief at 10.) We flatly reject this claim. Specifically, when read in the context in which it was uttered, the Court's statement indicates that the powers of constables and police officers are coextensive in matters relating to conservation of the peace. *Id.* Further, as the remainder of the Court's Opinion indicates, its notation that [t]he constable is a police officer was intended as further support for the Court's ultimate conclusion that a constable belongs analytically to the executive branch of government. *Id.* Therefore, since Act 147 did not involve the relative arrest powers of constables and police officers, the Court's statement cannot be taken as a blanket endorsement of constable powers coextensive with those of police officers under all circumstances. Finally, the Court's finding that constables are independent contractors, as quoted above, clearly indicates that the Court did not consider constables and police officers analogous for all purposes, since Pennsylvania law has never characterized police officers as independent contractors.


Taylor, 677 A.2d at 848.

In *Davis v. Borough*, 669 F.Supp.2d 532 (E.D. Pa. 2009), the district court noted:

Constable Connor, in arguing that constables serving warrants are merely arm [s] of the judicial power, (Def.'s Mot. to Dismiss 5), appears to imply that Pennsylvania State constables are not the equivalent of police officers. However, state law grants constables, as well as police officers, the power to arrest all persons guilty of a breach of the peace ... without warrant and upon view. 13 Pa. Con. Stat. § 45. The fact that constables are authorized to initiate discretionary acts depriving others of their rights, *Waits v. McGowan*, 516 F.2d 203, 207 (3d. 1975)], argues in favor of considering constables as equivalent to police officers in the context of civil liability immunity.

Id. at 535.

Similarly, the court of appeals in *County of Allegheny v. Berg*, [219 F.3d 261](#) (3d Cir. 2000), and *Abbott v. Latshaw*, [164 F.3d 141](#) (3d Cir. 1998), and the district court in *Maloney v. City of Reading*, 04-cv-5318, 2006 WL 305440 (E.D. Pa. Feb. 8, 2006), treated constables as police officers for purpose of § 1983 claims. Finally, Pennsylvania Rule of Criminal Procedure 103 defines a police officer as "any person who is by law given the power to arrest when acting within the scope of the person's employment." Pa. R. Crim. P. 103.

 **The court concludes that in the context of those cases a constable is a police officer.** The court next must determine whether the evidence adduced is sufficient to withstand a motion for summary judgment. In making this determination, a court must view the facts in the light most favorable to the nonmoving party, must draw all reasonable inferences, and resolve all doubts in favor of the nonmoving party, and must not engage in credibility determinations. In light of this standard and the contradictory evidence present in the record (as noted, plaintiff adduced evidence that the handcuffs were tight and that she could not breathe; defendant, on the other hand, adduced evidence that plaintiff experienced pain only because she was struggling and he could not take the handcuffs off because of safety issues) the court must deny defendant's motion for summary judgment with respect to this claim.

(iii) First Amendment retaliation claim

The Court of Appeals for the Third Circuit in *Eichenlaub v. Township of Indiana*, [385 F.3d 274](#) (3d. Cir. 2004), held: "In general, constitutional retaliation claims are analyzed under a three-part test. Plaintiff must prove (1) that he engaged in constitutionally-protected activity; (2) that the government responded with retaliation; and (3) that the protected activity caused the retaliation." *Id.* at 282.

With respect to the First Amendment retaliation claim, plaintiff argued that she was engaged in protected speech when defendant retaliated against her by "handcuffing and further assaulting" plaintiff. (ECF No. 40 at 14.) Plaintiff asserted her stating an intention to report the incident to the Humane Society and complaining about the handcuffs being too tight are instances of protected speech.

In response, defendant argued that plaintiff failed to adduce sufficient evidence to establish a violation of her First Amendment rights because her comments related to private issues — not public ones — and as such are not protected under the First Amendment. In support, defendant cited *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, [472 U.S. 749](#) (1985), for the proposition that "speech on matters of public concern . . . is at the heart of First Amendment protection." ECF No. 44 at 6.

This court disagrees. Plaintiff does not need to show that the speech in issue must be of matters of public concern to be protected under the First Amendment. In *Eichenlaub*, the court of appeals held:

The District Court relied in part on our opinion in *Anderson* [*v. Davilla*, 125 F.3d 148 (3d Cir. 1997)] to hold that plaintiff must show that speech is a matter of public concern in order to receive First Amendment protection. App. A17 (quoting *Anderson*, 125 F.3d at 162). This reading of our case law, however, is overbroad. Our decision in *Anderson* — and all the other decisions relied upon in the District Court or by the parties—provide only that a public concern requirement applies when a claim of First Amendment retaliation is brought by a public employee against his or her government employer. *Anderson*, 125 F.3d at 162. The speech on public concerns requirement embodied in these decisions has not been applied, however, when non-employees complain that government has retaliated against them as citizens for their speech. To expand this public concern limitation into the broader context of all citizen speech would wrench it from its original rationale and curtail a significant body of free expression that has traditionally been fully protected under the First Amendment.

Id. at 282 (emphasis in original).

Thus, the speech in this case, even if it was about matters of private concern, could be entitled to First Amendment protection. The evidence of record is in conflict with respect to whether the alleged "protected activity" caused the retaliation. Accordingly, defendant's motion for summary judgment must be denied with respect to this claim.

(B) State law claims

(i) Assault and battery claims

Defendant argued that he did not commit assault and battery against plaintiff and that any force he used against her was justified under 18 PA. CONS. STAT. § 508(1).¹² Plaintiff asserted that section 508 is not applicable here because the arrest was unlawful.

The Pennsylvania Supreme Court in *Renk v. City of Pittsburgh*, [641 A.2d 289](#) (Pa. 1994), stated:

Assault is an intentional attempt by force to do an injury to the person of another, and a battery is committed whenever the violence menaced in an assault is actually done, though in ever so small a degree, upon the person. *Cohen v. Lit Brothers*, 70 A.2d 419, 421 (1950). (Citation omitted.) A police officer may use reasonable force to prevent interference with the exercise of his authority or the performance of his duty. In making a lawful arrest, a police officer may use such force as is necessary under the circumstances to effectuate the arrest. The reasonableness of the force used in making the arrest determines whether the police officer's conduct constitutes an assault and battery.

Id. at 293.

Here, as discussed above, there are genuine issues of material fact concerning what occurred prior to the arrest and the arrest itself. Accordingly, defendant's motion for summary judgment must be denied with respect to this claim.

(ii) False imprisonment claim

Plaintiff argued that she adduced sufficient evidence to withstand a motion for summary judgment with respect to the claim of false imprisonment. Specifically, plaintiff argued that she was unlawfully handcuffed and prevented from leaving.

A claim for false imprisonment requires a plaintiff to provide that (1) defendant intended to confine the plaintiff, (2) defendant performed an action that directly or indirectly produced such confinement, and (3) plaintiff was either conscious of or harmed by the conduct. *Gagliardi v. Lynn*, 446 Pa. 144, 148 n. 2, 285 A.2d 109 (1971) (quoting Restatement (Second) of Torts § 35 (1965)); *Pennoyer v. Marriott Hotel Servs., Inc.*, 324 F.Supp.2d 614, 619-20 (E.D. Pa. 2004). In the context of an arrest, the plaintiff may establish liability for false imprisonment by proving either that the arrest occurred without probable cause or that the person effecting the arrest lacked a privilege to do so. *Gagliardi*, 285 A.2d at 111 n. 3; *Cerami v. Blake*, No. Civ.A. 92-4358, 1993 WL 21011, at *6 (E.D. Pa. 1993). Hence, a false arrest is an alternative means of establishing liability for false imprisonment but is not itself a tort in the sense of being an independent source of liability. *Cerami*, 1993 WL 21011, at *6 (quoting *Gagliardi*, 285 A.2d at 111).

Police officers are privileged to commit the tort of false imprisonment during an arrest if the officer reasonably believes that the suspect placed under arrest has committed a crime. Restatement 2D Torts § 121; see also *Cambist Films, Inc. v. Duggan*, 475 F.2d 887, 889 (3d Cir. 1973) (applying § 121 of the Restatement under Pennsylvania common law); *Belcher v. United States*, 511 F.Supp. 476, 483-84 (E.D. Pa. 1981). Later exculpation of the suspect does not vitiate the privilege provided that the officer reasonably believed that the individual had committed a crime at the time the arrest occurred. Restatement 2D Torts § 121. The officer is protected in every case where he acts under a reasonable mistake as to the existence of facts which ... justify an arrest. *Id.* § 121 cmt. i; *Cambist Films*, 475 F.2d at 889.

Dull v. West Manchester Twp. Police Dep't, [604 F.Supp.2d 739](#), 754-55 (M.D.Pa. 2009).

Because there are genuine issues of material fact in dispute concerning whether plaintiff's arrest was based upon probable cause, this court cannot grant summary judgment in favor of defendant with respect to plaintiff's false imprisonment claim.

(iii) Intentional infliction of emotional distress claim

Plaintiff argued defendant's motion for summary judgment with respect to her intentional infliction of emotional distress claim should be denied because she sustained emotional injuries from the incident. (ECF No. 40 (citing ECF No. 41 at 7, 9).) Defendant rebutted saying there was no evidence presented to show that the distress was "severe." (ECF No. 33 at 15.) The court agrees.

In order to sustain a claim for intentional infliction of emotional distress (IIED), the plaintiff must establish that: (1) the defendant's conduct was intentional or reckless, (2) the defendant's conduct was extreme and outrageous, (3) the defendant's conduct caused emotional distress, and (4) the resultant emotional distress was severe. *Bruffett v. Warner Commc'ns, Inc.*, 692 F.2d 910, 914 (3d Cir. 1982). For an IIED claim to survive, the court must be satisfied that the defendant's alleged misconduct is so extreme and outrageous that it go[es] beyond all possible bounds of decency, and ... [is] regarded as atrocious, and utterly intolerable in a civilized society. *Wilkes v. State Farm Ins. Cos.*, No. 1:05-CV-586, 2005 WL 1667396, at *4 (M.D. Pa. July 15, 2005). . . . In the instant matter, the allegedly improper arrests performed by Conway, Figge, Bixler, and Haines are not sufficiently extreme and outrageous to support a claim for IIED. At most, defendants miscalculated the propriety of their law enforcement activities.

Dull, 604 F. Supp.2d at 756-57.

Here, even if the court were to find that defendant's conduct met the first and third elements of the claim, no reasonable jury could render a verdict in favor of plaintiff on this claim. There is no evidence of record regarding the second and fourth elements. Defendant's motion for summary judgment concerning the intentional infliction of emotional distress claim must be granted.

(ii) Negligent infliction of emotion distress claim

With respect to the negligent infliction of emotional distress claim, plaintiff argued that the motion for summary judgment should be denied because she suffered "emotional injuries." (ECF No. 40 at 15.) Emotional injuries, however, are not enough.

The Superior Court of Pennsylvania in *Doe v. Philadelphia Community Health Alternatives AIDS Task Force*, [745 A.2d 25](#) (Pa. Super. Ct. 2000), noted:

In Pennsylvania, the cause of action for negligent infliction of emotional distress has been limited by court decisions. In order to recover, the Plaintiff must prove one of four elements: (1) that the Defendant had a contractual or fiduciary duty toward him; (2) that Plaintiff suffered a physical impact; (3) that Plaintiff was in a zone of danger and at risk of an immediate physical injury; or (4) that Plaintiff had a contemporaneous perception of tortious injury to a close relative. In all cases, a Plaintiff who alleges negligent infliction of emotional distress must suffer immediate and substantial physical harm.

Id. at 27-8 (emphasis in original).

Here, plaintiff relies on the second theory, *i.e.*, plaintiff suffered a physical impact. Plaintiff, however, failed to demonstrate the requisite physical harm from the emotional suffering. In her testimony, plaintiff reported only being "emotionally scarred" and "violated" (ECF No. 41 at 7, 9), but did not adduce evidence of the requisite physical manifestation of the alleged emotional suffering. Thus, the claim fails. The superior court as a matter of law in *Toney v. Chester County Hospital*, [961 A.2d 192](#) (Pa. Super. Ct. 2008), held: "If the actor's conduct is negligent as creating an unreasonable risk of causing either bodily harm or emotional disturbance to another, and it results in such emotional disturbance alone, without bodily harm or other compensable damage, the actor is not liable for such emotional disturbance." Id. at 199 (quoting RESTATEMENT (SECOND) OF TORTS § 436A). Plaintiff's negligent infliction of emotional distress claim fails not because she failed to prove a physical impact; rather, she failed to adduce evidence of an immediate and substantial physical injury. See *Cimildoro v. Metro. Prop. and Cas. Ins. Co.*, No. 09-cv-1907, 2010 WL 891838, at *5 (E.D. Pa. Mar. 8, 2010). No reasonable jury could render a verdict in plaintiff's favor on this claim and defendant's motion for summary judgment with respect to the negligent infliction of emotional distress claim must be granted.

II. Plaintiff's motion for summary judgment

Plaintiff argued that "[e]xcepting a warrantless arrest for a felony, Constables do not have the power to arrest without a warrant in Pennsylvania unless specifically given that power of the statute." (ECF No. 35 at 2.) Plaintiff added: "There is no statute which granted the Defendant . . . the authority to arrest the Plaintiff for summary offense as he did on June 22, 2009," and concluded "based on the undisputed material facts, Plaintiff is entitled to summary judgment on the specific issue of the violation of her fourth amendment rights." Id.

The court disagrees. As discussed above, the underlying facts are far from being "undisputed" and the caselaw does not support her position. A jury will need to determine whether defendant had probable cause to believe plaintiff engaged in aggravated assault against him and whether defendant used excessive force against plaintiff.

Conclusion

For the reasons set forth above, defendant's motion for summary judgment (ECF N. 30) will be granted with respect to the intentional and negligent infliction of emotional distress claims and will be denied in all other respects and plaintiff's motion for partial summary judgment (ECF No. 35) will be denied.

An appropriate order will follow.

FootNotes

1. The complaint refers to two actions: "Federal Civil Rights Violations" and "Violations of State Law." ECF No. 1. Each action" includes several claims. In the first "action," plaintiff asserted that defendant violated her federal rights: a) to be free from unreasonable seizures, b) to be free from use of excessive force, and c) to freedom of speech. The second "action" includes state law claims for assault, battery, false imprisonment, and intentional and negligent infliction of emotional distress. The complaint also referred to a state law claim for defamation. Plaintiff, however, never made factual allegations with respect to that claim, whether in the complaint or elsewhere. The court must conclude, therefore, that plaintiff abandoned the defamation claim.

2. Section 1983, in relevant part, provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

42 U.S.C. § 1983.

3. Section 7158 provides as follows:

§ 7158. Arrest in boroughs

In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who:

- (1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.
- (2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.
- (3) Violates any ordinance of the borough for which a fine or penalty is imposed.

44 PA. CONS. STAT. § 7158.

4. The court agrees with plaintiff that section 7158 is not applicable to the instant matter as defendant is not a constable of a borough. See *Commonwealth v. Roose*, [690 A.2d 268](#), 271 (Pa. Super. Ct. 1997) (relying on 13 PA. CONS. STAT. § 45, now 44 PA. CONS. STAT. § 7158). It should be noted, however, that section 7158 became effective on December 8, 2009. At the time of the relevant facts (June 2009), 13 PA. CONS. STAT. § 45 controlled the matter, not section 7158. For purposes of the issue raised here, however, 13 PA. CONS. STAT. § 45 and 44 PA. CONS. STAT. § 7158 are essentially identical. Section 45 provides as follows:

The policeman and constables of the several boroughs of this commonwealth, in addition to the powers already conferred upon them, shall and may, without warrant and upon view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinances of said borough, for the violation of which a fine or penalty is imposed.

13 PA. CONS. STAT. § 45.

5. See also ECF No. 39 at 1-2 (same).

6. See *Abbott v. Latshaw*, [164 F.3d 141](#) (3d Cir. 1998):

In Pennsylvania, constables are elected public officials with prescribed duties and liabilities, see 13 Pa. Cons. Stat. Ann. §§ 1, 41, 45 (1998) [repealed, see now 44 PA.C.S.A. §§ 7111, 7112, 7153, and 7158]. . . . Diehl[, a county constable,] admits that he acted as a constable, and identified himself as such to [plaintiff]. The other [three] officers arrived on the scene in response to Diehl's call for assistance, and were on duty. All four law enforcement officers were clearly state actors.

Id. at 146.

7. In *Schwenk*, the superior court held: "The fact that a state police officer is off-duty does not mean that the trooper's power to conduct official police business automatically ceases" (citing *Commonwealth v. Hurzt*, [532 A.2d 865](#) (Pa. Super. Ct. 1987)). The *Schwenk* court also considered *Commonwealth v. Eshelman*, [383 A.2d 838](#) (Pa. 1978). The Superior Court summarized the holding in *Eshelman* as follows:

In *Eshelman*, a non-uniformed, off-duty police officer discovered several packages containing marijuana in an old car belonging to the defendant. The officer was outside of his jurisdiction at the time. The Pennsylvania Supreme Court held that although the officer was without authority to do so, he was acting as a police officer, based on his training and experience, and on his intent to turn over the packages to his superior on the police force for investigation, when he removed the packages. [*id.* at 842] Thus, under the holding of *Eshelman*, a police officer may act in the performance of his duties even if he is not in uniform, and is not officially on-duty at the time of an arrest.

Schwenk, 777 A.2d at 1153.

8. In *In re Barry W.*, the superior court held:

Unlike Section 5104 of the Crimes Code, the offense of aggravated assault, 18 Pa.C.S. § 2702(a)(3), does not require that the assault occur during an attempt to effectuate a lawful arrest. In 1986, the legislature amended 18 Pa.C.S. § 2702(a)(3) and substituted the words in the performance of duty for the words making or attempting to make a lawful arrest. This change broadened the scope of the statute, evidencing the concern of the legislature with protecting police officers from bodily injury under any circumstances.

In re Barry W., 621 A.2d at 680 (emphasis in original).

9. In *Novak*, the superior court held:

Appellant argues that a jury could have found that Officer Brackney had made an unlawful arrest and that under such circumstances appellant's offense would have been simple assault. We reject this argument. Under the 1986 amendment, a lawful arrest is not an essential element to a violation of 18 Pa.C.S. § 2702(a)(3). All that is required is that the officer be in the performance of duty. The police officer in the instant case was in uniform and in the performance of her duties at the time of appellant's assault. There was no contention otherwise. Under the circumstances of this case, therefore, the trial court was not required to instruct the jury on simple assault.

Novak, 564 A.2d at 990.

10. See *Hopper v. Rinaldi*, No. 07-5323, 2008 WL 558049 (D. N.J. Feb. 29, 2008):

The fact that law enforcement officials acted beyond the scope of their geographic authority may amount to a violation of state law but does not violate the Fourth Amendment. See, e.g., *Guest v. Leis*, 255 F.3d 325, 334 (6th Cir.2001) (search and seizure by officers acting outside their jurisdiction did not violate the Fourth Amendment); *United States v. Mikulski*, 317 F.3d 1228, 1233 (10th Cir. 2003) (officers' apparent violation of state law in making an arrest outside their jurisdiction did not amount to a federal violation); *Pasiewicz v. Lake County Forest Preserve District*, 270 F.3d 520, 526-[27] (7th Cir. 2001) (although a blatant disregard of state law and the chain of command could weigh on the scales of reasonableness, the fact of the officers' extraterritorial arrest in violation of state law did not violate the Fourth Amendment); *Abbott v. City of Crocker*, 30 F.3d 994, 998 (8th Cir. 1994) (same); *Voicenet Communs., Inc. v. Corbett*, [No. 04-1318, 2006 WL 2506318 at *10 (E.D. Pa. Aug. 30, 2006)] (same). Hence, even if there were a hypothetical state-law provision expressly forbidding police officers to act outside their geographic jurisdiction, the police officers action in violation of such provision would not violate the Fourth Amendment, since a violation of state law is not a federal constitutional violation. See, e.g., *United States v. Baker*, 16 F.3d 854, 856 n. 1 (8th Cir. 1994) (A police violation of state law does not establish a Fourth Amendment violation).

Id. at *2-3.

11. The Pennsylvania Crimes Code, in relevant part, provides: "'Police officer.' The term shall include the sheriff of a county of the second class and deputy sheriffs of a county of the second class who have successfully completed the requirements under the act of June 18, 1974 (P.L. 359, No. 120), referred to as the Municipal Police Education and Training Law." 18 PA. CONS. STAT. § 103.

12. Section 508, in relevant part, provides as follows:

A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. . . .

18 PA. CONS. STAT. § 508(a)(1).

SWINEHART
CASE

United States District Court, E.D. Pennsylvania

August 14, 2002

SWINEHART v. McANDREWS No. 01 CV 2281.

"The Pennsylvania Supreme Court defined the role of constables as that of a peace officer, "charged with the conservation of peace, and whose business it is to arrest those who violated it." In re Act 147 of 1990, 528 Pa. 460, 598 A.2d 985 (1991).

...

Though a constable may also work as a process server, the right to the particular assignments in the district is not an essential function of the position"

...

the decision accomplishes the opposite, as it distinguished between the essential work of a constable as a peace officer, and other peripheral roles such as that of a process server. See Act 147, 598 A.2d at 990.

MEMORANDUM AND ORDER

ANITA B. BRODY, District Judge.

Plaintiff Walter Swinehart ("plaintiff" or "Swinehart") has filed suit against the Honorable R. Barry McAndrews ("Judge McAndrews"), the president judge of the Seventh Judicial District of Pennsylvania ("district"), and Charles A. Carey, Jr. ("Carey") (collectively "defendants"), the deputy court administrator of the district, alleging that defendants violated his constitutional rights under 42 U.S.C. § 1983 ("§ 1983"). Specifically, Swinehart, an elected constable, claims that defendants violated his rights to both procedural and substantive due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The alleged violation occurred when Judge McAndrews, with the assistance of Carey, issued a directive to all district justices in Bucks County instructing them to no longer give assignments to Constable Swinehart. Plaintiff filed this action on May 9, 2001. On February 4, 2002, Swinehart filed a motion for summary judgment. Defendants also filed a motion for summary judgment on February 6, 2002. Now before me are those motions.

FACTUAL BACKGROUND¹

Swinehart was elected constable in Morrisville Borough. The Seventh Judicial District frequently contracted with plaintiff in his capacity as constable, hiring him to serve warrants not only within the district, but on a statewide basis as his position allowed. Though not employed by the Court of Common Pleas for Bucks County, Swinehart received approximately 95% of his assignments from the courts and agencies of the district. On January 17, 2001, after one such assignment, Carey received a telephone call from Helena Hughes. Ms. Hughes indicated that she wanted to file a complaint against Swinehart, based on the manner in which he conducted himself while serving a warrant on her son for non-payment of child support. Carey advised Judge McAndrews of this complaint at which point Judge McAndrews instructed Carey to begin an investigation.

Pursuant to Carey's request Ms. Hughes sent a written complaint to the district. On January 19, 2001, Carey received the written complaint and telephoned Jan Fly, the Chief Domestic Relations Investigative Officer for Bucks County, to request that she obtain statements

[221 F.Supp.2d 555]

from Swinehart and Constable Andrew Bethman, who assisted in serving the warrant at the Hughes residence. The same day, Carey also spoke with Swinehart directly. During that conversation, plaintiff indicated that he had already prepared an incident report and would forward it to Carey. Carey received this report on January 22, 2001. It contained both an original statement dated January 15, 2001, and an amendment dated January 19, 2001. Because the complaint and Swinehart's reports alluded to the presence of Philadelphia Police Officers, Carey also contacted the Philadelphia Police Department and its Internal Affairs Division. After

conducting this investigation, Carey sent Judge McAndrews a memorandum and copies of Mrs. Hughes' complaint and plaintiff's incident report.

On January 24, 2001, Judge McAndrews instructed Carey to advise District Justices Kline and Clark that "Constable Walter Swinehart is not to be issued any additional work assignments by your District Court effective this date forward. This restriction shall continue in place until further notice and review by President Judge McAndrews." Memorandum of January 24, 2001, from Carey to District Justices Francis E. Clark and Joanne V. Kline. The following day Judge McAndrews received a letter from plaintiff's attorney, Paul R. Beckert, Jr., ("Beckert") questioning his client's "suspension." Under the instruction of Judge McAndrews, Carey responded to Beckert's letter the following day. Carey indicated that Swinehart was a "private vendor," had not been suspended from his constable position, and could continue to serve in that capacity. However, because Swinehart's own account of the incident indicated that he had drawn his weapon, he would not receive further work from the district, because this was "precisely the issue the Court had concerns on the last incident with Constable Swinehart."² In addition to alerting the district justices that they should not assign Swinehart any work, at the direction of Judge McAndrews, Carey forwarded a copy of the Hughes complaint to the Bucks County Director of Domestic Relations and the Chief Domestic Relations Investigative Officer and advised them that because plaintiff had been involved in a similar incident in the recent past, he was not to receive new assignments from the district courts. Since the issuance of this directive, Swinehart retains his position as constable, but

[221 F.Supp.2d 556]

has received no work from the Bucks County court system.

LEGAL STANDARD

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). The trial court should determine whether there are issues with regard to material facts that warrant a trial. See *Anderson v. Liberty Lobby, Inc.*, [477 U.S. 242](#), 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In making this determination, the court must consider the underlying facts in the light most favorable to the nonmoving party, giving that party the benefit of all reasonable inferences that might be drawn from those same facts. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, [475 U.S. 574](#), 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Sempier v. Johnson and Higgins*, [45 F.3d 724](#), 727 (3d Cir.1995) (en banc). It is appropriate to grant summary judgment if the court finds that the record "could not lead a rational trier of fact to find for the nonmoving party, [and] there is no `genuine issue for trial.'" *Matsushita* 475 U.S. at 587, 106 S.Ct. 1348 (citation omitted).

DISCUSSION

Plaintiff's complaint includes three separate counts. First, Swinehart alleges that defendants denied him of his liberty rights without due process of law in violation of the Fourteenth Amendment of the United States Constitution. Plaintiff's second claim states that defendants caused harm to his reputation in the community and have prevented him from earning a living in the profession in which he is trained. Last, plaintiff alleges that defendants denied him of his property right in his position as a constable without due process of law. In order to state a successful claim for violation of due process pursuant to § 1983, plaintiff must demonstrate (1) an interest included within the Fourteenth Amendment's protections for property or liberty and (2) that the state deprived him of that protected interest without requisite notice or some type of hearing. See *Board of Regents of State Colleges v. Roth*, [408 U.S. 564](#), 570 n. 7, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Independent Enterprises Inc. v. Pittsburgh Water and Sewer Authority*, [103 F.3d 1165](#), 1177 (3d Cir.1997). Because Swinehart has not identified a liberty or property interest in his position nor demonstrated that defendants failed to provide him with appropriate process to safeguard his reputation, I will deny his motion for summary judgment and grant defendants' motion in its entirety.

1. Plaintiff does not have a liberty interest in receiving work from the district courts

"The right to hold specific private employment and follow a chosen profession free from unreasonable governmental interference comes within both the 'liberty' and 'property' concepts of the Fifth and Fourteenth Amendments." *Piecknick v. Commonwealth of Pennsylvania*, [36 F.3d 1250](#), 1259 (3d Cir.1994). This right does not extend to include the right to any particular job, but instead protects only the "liberty to pursue a calling or occupation." *Id.* (quoting *Wroblewski v. City of Washburn*, [965 F.2d 452](#), 455 (7th Cir.1992)). When a person's license to pursue a calling is taken away or interfered with in a substantial fashion, a plaintiff may demonstrate a due process violation. *Id.* at 1261. However, where a plaintiff has been denied only a specific job assignment or the opportunity to bid on or otherwise obtain future government contracts, that denial only implicates a liberty

[221 F.Supp.2d 557]

interest where the barrier is based on charges of fraud or dishonesty. See *Labalokie v. Capital Area Intermediate Unit*, [926 F.Supp. 503](#), 508 (M.D.Pa.1996). Ultimately, "it is the liberty to pursue a particular calling or occupation and not the right to a specific job that is protected by the Fourteenth Amendment." *Piecknick*, 36 F.3d at 1262.

Swinehart contends that the actions of Judge McAndrews and Carey deprived him of the opportunity to earn a living practicing the profession in which he trained and his ability to perform his duties as a duly elected constable. Defendants argue that plaintiff cannot demonstrate any deprivation of a liberty interest because they have not deprived him of the right to pursue a particular calling or occupation, and have only limited his opportunities by refusing to assign him work from the Bucks County Court of Common Pleas. Plaintiff acknowledges that he is still an elected constable and can perform all

duties associated with that position. Additionally, he may seek assignments in other judicial districts and may secure work as a process server. Swinehart concedes that he "neither had nor has any right to get any work from any District Justice or anyone else." Pl.'s Mot. for Summ. J. at 8.

Based upon his own admissions, plaintiff has shown that defendants are entitled to summary judgment on Count I of his complaint. Although Swinehart takes issue with his exclusion from the work assignments in the Bucks County courts, basically the right to a specific job, the actions of the defendants have not prevented him from securing alternate work, earning a livelihood, or pursuing his chosen calling as a constable. The Pennsylvania Supreme Court defined the role of constables as that of a peace officer, "charged with the conservation of peace, and whose business it is to arrest those who violated it." *In re Act 147 of 1990*, [528 Pa. 460](#), [598 A.2d 985](#) (1991). The directive issued by Judge McAndrews did not limit plaintiff's rights as a peace officer and Swinehart may continue to conserve the peace and arrest violators of it. Though a constable may also work as a process server, the right to the particular assignments in the district is not an essential function of the position, nor is it a liberty interest protected by the Fourteenth Amendment. See *Piecknick*, 36 F.3d at 1262. Swinehart's election to the position of constable gave him the constitutionally protected right to pursue the core duties associated with that position, his chosen profession. However, it did not award him a protected liberty interest in receiving assignments from the Seventh Judicial District, that of Bucks County. Because Swinehart cannot demonstrate the first element of a due process claim, a protected liberty or property interest, I will deny plaintiff's motion for summary judgment and grant defendants' motion as to the First Count of plaintiff's complaint.

2. Plaintiff does not have a property interest in receiving work from the district courts

Not all workers have a property interest in their employment. A property interest arises where there is more than a "unilateral expectation" of continuing employment and instead a "legitimate claim of entitlement" to work exists. *Roth*, 408 U.S. at 577, 92 S.Ct. 2701. An express contract, a tenured position, or a "clearly implied promise of continued employment" may create this right. *Id.* at 576, 92 S.Ct. 2701. The legislature can also create this right by statute. See *Larsen v. Senate of Commonwealth of Pennsylvania*, [154 F.3d 82](#), 92 (3d Cir.1998); *Carter v. City of Philadelphia*, [989 F.2d 117](#), 120 (3d Cir. 1993). Therefore, a property interests must arise from either statute, regulation, government policy, or a mutually explicit

[221 F.Supp.2d 558]

understanding of continued employment. See *Piecknick*, 36 F.3d at 1256. In all cases, state law dictates whether or not a property interest exists. See *Roth*, 408 U.S. at 577-78, 92 S.Ct. 2701.

In 1990, the Pennsylvania legislature enacted a statute providing for the supervision and training of constables as well as for the decertification and discipline of constables

by the President Judges of the Court of Common Pleas. In declaring this law unconstitutional, the Pennsylvania Supreme Court discussed the role and function of the constable. See *Act 147*, [528 Pa. 460](#), [598 A.2d 985](#). The court first noted that constables worked as independent contractors rather than as employees of the commonwealth, the judiciary, or the municipality in which they serve. *Id.* at 986 (*citing Rosenwald v. Barbieri*, [501 Pa. 563](#), [462 A.2d 644](#) (1983)). Guided by its previous rulings, the court separated constables from judicial staff and found that they "were related staff who aid the judicial process, but who are not supervised by the courts." *Id.* at 987. "Simply stated, a constable is a peace officer . . . [who] may also serve process in some instances." *Id.* at 990. Because as peace officers constables essentially serve an executive function, as peace officers responsible for keeping the peace and arresting those who violate it, the court determined that the judicial branch of government had no role in supervising them. Consequentially, the Pennsylvania Supreme Court declared the 1990 act unconstitutional as a violation of the separation of powers. See *id.* at 990. Under Pennsylvania law then, a constable may be removed or disciplined for acts of malfeasance or misfeasance only upon petition of the district attorney or an individual citizen. See 13 P.S. § 31. Short of following this procedure, judicial officers and the courts have no power to discipline or supervise the actions of duly elected constables, who as peace officers are a part of the executive, and not judicial, branch of government. See *Act 147*, [598 A.2d](#) at 990.

Swinehart contends that he has a protected property interest in his elected position of constable as created by the Pennsylvania legislature in enacting 13 P.S. § 1 and 13 P.S. § 31, governing the election and removal of constables respectively. Defendants essentially concede that plaintiff does have a property interest in the constable position. However, where plaintiff views Judge McAndrews' directive as tantamount to stripping him of his elected position, defendants contend that their actions only impacted plaintiff's eligibility to receive assignments from the Seventh Judicial District, something in which he had no property interest.

The first statute cited by plaintiff indicates when elections for constable are held, clearly indicating that constable is an elected position. See 13 P.S. § 1. The second statutory provision contains the procedure for removing a constable from office. See 13 P.S. § 31. Neither law makes any reference to how constables receive assignments, grants them any inherent right to perform particular duties, nor defines any essential function of their office. Therefore, any property interest the plaintiff had in receiving assignments from the Bucks County Court of Common Pleas is not derived from statute. Nor does the decision of the Pennsylvania Supreme Court in overturning the 1990 Act create a property interest in receiving assignments from the district. If anything, the decision accomplishes the opposite, as it distinguished between the essential work of a constable as a peace officer, and other peripheral roles such as that of a process server. See *Act 147*, [598 A.2d](#) at 990. Plaintiff has not identified any rule, regulation, custom, or mutually explicit understanding that would provide the basis for a property interest in receiving work from

the district. See *Piecknick*, 36 F.3d at 1256. Indeed, after the 1999 incident at the Erickson home, subsequent litigation, and settlement agreement, plaintiff would have been aware of the conditional nature of his continued relationship with the Bucks County Court of Common Pleas.

Ultimately Swinehart acknowledges the deficiency of his claim in admitting that he "neither had nor has any right to get any work from any District Justice or anyone else." Pl.'s Mot. for Summ, J. at 8. However, he contends that he does have a property interest in "assuring he is not deprived of work by the intervention of [Judge McAndrews] or [Carey] who have no power or responsibility over him." *Id.* Once again, Swinehart has failed to identify the statutory or regulatory source of this right. Though a President Judge of the Court of Common Pleas does not supervise constables, *Act 147*, 598 A.2d at 990, he or she does exercise general supervision and administrative control over the justices within the district. See Rule 17 of the Rules Governing Standards of Conduct of District Justices. The actions of the defendants obviously impacted plaintiff in a significant manner, but did not attempt to exert any supervision over a constable, and only controlled the conduct of the officers of the district. The directive issued by Judge McAndrews is consistent with his authority as the President Judge for the Court of Common Pleas for the Seventh Judicial District and did not deprive Swinehart of a property interest without due process of law. Defendants' correspondence with plaintiff's counsel made clear that the decision to give Swinehart no additional assignments from the court did not effect his role as constable and that he remained free to seek work anywhere he was legally permitted to do so. The core function of Swinehart's role as a constable, that of a "peace officer," remained wholly intact. See *Act 147*, 598 A.2d at 990. Though Judge McAndrews's directive may have made it more difficult to secure work from other sources, or perform his peripheral function as a process server, it did not deny Swinehart of a protected property interest. Because Swinehart had no protected interest under Pennsylvania law in continuing to serve the Seventh Judicial District, I will deny plaintiff's motion for summary judgment and grant defendants' motion for summary judgment as to the Third Count of Swinehart's complaint.

3. Plaintiff cannot sustain a due process claim based on damage to his reputation

Even where an individual does not have a liberty or property interest in continued employment, he or she may still have a protected liberty interest in his or her reputation. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantineau*, [400 U.S. 433](#), 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971). If a plaintiff contends that the government has brought false charges against him of a nature that could potentially cause significant damage to his or her position in the community, the government may be required to hold a hearing and provide the plaintiff with the opportunity to clear his or her name. This is especially true where the charges impose a "stigma or disability," that might impact on the plaintiff's future opportunities to secure other employment. *Roth*, 408 U.S. at 573, 92 S.Ct. 2701. However, the right to a name clearing hearing is not triggered unless the allegations are

significantly stigmatizing. See *McKnight v. Southeastern Pennsylvania Transportation Authority*, [583 F.2d 1229](#), 1236 (3d Cir.1978). Where there is no factual dispute between the parties concerning the circumstances leading to the termination

[221 F.Supp.2d 560]

of the employment relationship, the government has no obligation to hold a name-clearing hearing because it would serve no useful purpose. See *Codd v. Velger*, [429 U.S. 624](#), 627, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977).

Swinehart alleges that the defendants have damaged his reputation and negatively impacted his ability to secure alternative work. However, he has presented no evidence to support this claim. Plaintiff has only shown that he used to receive approximately 95% of his work from the district and no longer receives those assignments. He has not offered any proof that other sources of work have refused to contract with him because of Judge McAndrews' order. Moreover, even if plaintiff did make this showing he is not entitled to a name-clearing hearing. Plaintiff and defendants dispute some of the details of what occurred at the Hughes home, but plaintiff admits that he drew his weapon. Defendants contend that Swinehart's repeated drawing of his weapon while serving warrants for non-dangerous offenses caused Judge McAndrews to issue the directive barring future assignments for plaintiff. Swinehart has not alleged that this reason proffered by defendants is false, nor has he provided any alternative explanation for defendants' actions. Therefore, even assuming that Judge McAndrews' directive significantly stigmatized plaintiff and made it more difficulty for him to secure assignments outside of the district, demonstrating a protected liberty interest, defendants still had no obligation to hold a hearing. Swinehart was not entitled to a hearing to clear his name because he does not dispute the factual basis underlying defendants' decision to give him no further work in the district. *Id.* Plaintiff's own admissions of fact again prove fatal to his claim. Because Swinehart was not entitled to a name-clearing hearing, defendants did not violate his due process rights by failing to provide him with one. Therefore, I will deny plaintiff's motion and grant defendants' motion for summary judgment as to the Second Count of the complaint.³

ORDER

AND NOW, this day of August 2002, it is ORDERED that plaintiff's motion for summary judgment (docket entry # 14) is DENIED and defendants' motion for summary judgment (docket entry # 15) is GRANTED. The clerk's office is instructed to enter judgment in favor of defendants and against plaintiff and shall mark this action closed.

FootNotes

1. The plaintiff and defendants present almost identical factual accounts and acknowledge that no genuine issues of fact exist in this case. However, in considering the motions for summary

judgment of each party separately, I have considered any discrepancy in the light most favorable to the nonmoving party.

2. The prior incident referred to in Carey's communications took place in July 1999, during the execution of arrest warrants for Lisa Erickson for failure to pay traffic citations. Following Lisa Erickson's arrest, her parents complained to the district about Swinehart's conduct. Though the accounts of some preliminary events differ, both Swinehart and the Ericksons acknowledge that plaintiff climbed the back stairs of the Erickson's home with his gun drawn and in the "low ready position," and that young children were present in the house at the time. On October 27, 1999, Judge McAndrews asked Carey to send a copy of the Ericksons' complaint to Justice Kline along with the instructions that no further assignments be given to Swinehart without first obtaining Judge McAndrews' approval. After issuance of this directive, Carey and Judge McAndrews were contacted by Beckert. On November 18, 1999, after a series of telephone calls and letters, Carey wrote to Beckert and indicated that Judge McAndrews' concern arose from the fact that Swinehart drew his weapon in relation to an unpaid traffic ticket and that the restriction remained in effect. On February 25, 2000, Swinehart brought suit against Carey in this court. During a settlement conference before the Honorable Diane M. Welsh, on July 14, 2000, Carey informed Swinehart that his conduct at the Erickson home was unacceptable and must not happen again. Judge McAndrews rescinded the directive and Swinehart gave assurances that no similar incident would occur in the future. Swinehart agreed, the action was closed, and he regularly received assignment within the Seventh Judicial District until Judge McAndrews' issued another directive on January 24, 2001.

3. To the extent any the counts of plaintiff's complaint might be interpreted as a claim for tortious interference with contractual relations, this court declines to exercise supplemental jurisdiction over that claim as all claims arising under federal law have been dismissed.

EMERGENCY RESPONDERS

Pennsylvania Statutes

Title 35, Section 75A01 –

"Emergency responder." Any of the following:

(2) A peace officer.

...

"Peace officer." As defined in 18 Pa.C.S. § 501 (relating to definitions).

...

Title 18, Section 501 – "Peace officer." Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses...

Referral: Title 35, Sec. 75A01. –

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=35&div=0&chpt=75A&sctn=1&subsctn=0#>

Title 18, Sec. 501. –

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=5&sctn=1&subsctn=0>

CHAPTER 75A
EMERGENCY RESPONDER MENTAL WELLNESS
AND STRESS MANAGEMENT

Sec.

75A01. Definitions.

Enactment. Chapter 75A was added July 23, 2020, P.L.670, No.69, effective immediately unless otherwise noted.

Cross References. Chapter 75A is referred to in section 8153 of this title.

§ 75A01. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cooperating officials and agencies." Includes the following:

- (1) The Department of Human Services of the Commonwealth.
- (2) A county mental health office located within this Commonwealth.
- (3) The State Fire Commissioner.
- (4) The Department of Drug and Alcohol Programs of the Commonwealth.

"Corrections officer." A full-time employee assigned to the Department of Corrections whose principal duty is the care, custody and control of inmates of a penal or correctional institution operated by the Department of Corrections.

"Critical incident." A situation to which an emergency responder responds that presents or involves either the death or serious bodily injury of an individual, or the imminent potential of death or serious bodily injury of an individual, or any situation faced by an emergency responder in the course of duty which causes or may cause the emergency responder to experience strong negative emotional reactions.

"Critical incident stress management network." A network that meets the requirements of membership with the Pennsylvania Voluntary Critical Incident Stress Management Network as administered by the department.

"Department." The Department of Health of the Commonwealth.

"Emergency responder." Any of the following:

(1) A current or former certified emergency medical services provider, current or former member of an emergency medical services agency, fire company or rescue company.

(2) A peace officer.

(3) A 911 dispatcher.

(4) A coroner or medical examiner who responds in an official capacity to an emergency.

(5) A corrections officer.

"Mental wellness and stress management guidelines." A plan that:

(1) Requires education and training on traumatic brain injuries and traumatic stress, including acute stress reactions, acute stress disorder, post-traumatic stress injuries and other emotional reactions and components of trauma reaction for emergency responders.

(2) Sets responsibilities for public agencies and emergency responders who sustain a post-traumatic stress injury or traumatic brain injury arising from their work.

(3) Provides remedial supportive actions for public agencies in response to a report of a post-traumatic stress injury or traumatic brain injury sustained by an emergency responder.

"Peace officer." As defined in 18 Pa.C.S. § 501 (relating to definitions).

"Peer-to-peer support program." A regional peer support service program established under section 75A03 (relating to peer-to-peer support programs) which offers services:

(1) designated by the department to be used in:

(i) recognizing the symptoms of a mental health condition, including those caused by a critical incident; and

(ii) making a behavioral health referral through an employee assistance program or other mental health agency for treatment by a licensed behavioral health professional; and

(2) delivered by a trained peer support provider.

"Post-traumatic stress injury." A post-traumatic stress disorder as defined by the American Psychiatric Association and documented in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 5th edition.

"Public agency." As defined under section 5302 (relating to definitions).

"Secretary." The Secretary of Health of the Commonwealth.

"Trained peer support provider." An emergency responder who has the training, credentials or experience to provide support and advocacy services and is recognized by the department under this chapter.

Referral:

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=35&div=0&chpt=75A&sctn=1&subscn=0>

CHAPTER 5 GENERAL PRINCIPLES OF JUSTIFICATION

Sec.

501. Definitions.

Enactment. Chapter 5 was added December 6, 1972, P.L.1482, No.334, effective in six months.

Cross References. Chapter 5 is referred to in sections 311, 908.1, 2503, 2507, 2605, 2608 of this title; section 711 of Title 51 (Military Affairs).

§ 501. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases, when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Believes" or "belief." Means "reasonably believes" or "reasonable belief."

"Correctional institution." Any penal institution, penitentiary, State farm, reformatory, prison, jail, house of correction, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

"Corrections officer." A full-time employee assigned to the Department of Corrections whose principal duty is the care, custody and control of inmates of a penal or correctional institution operated by the Department of Corrections.

"Deadly force." Force which, under the circumstances in which it is used, is readily capable of causing death or serious bodily injury.

"Dwelling." Any building or structure, including any attached porch, deck or patio, though movable or temporary, or a portion thereof, which is for the time being the home or place of lodging of the actor.

"Peace officer." Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term "peace officer" shall also include any member of any park police department of any county of the third class.

"Residence." A dwelling in which a person resides, either temporarily or permanently, or visits as an invited guest.

Referral:

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=5&sctn=1&subsctn=0>

PAFOC BRIEF

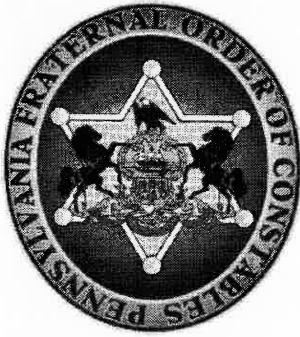
Pennsylvania Statutes

Title 18, Section 9102 – "Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, **but are not limited to:** organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

Referral:

Title 18, Sec. 9102. –

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=91&sctn=2&subsctn=0>



Pennsylvania Fraternal Order of Constables

5120 Derry Street, Suite 4287
Harrisburg, Pa 17111

(717) 916-4483

www.pafoc.org

POLICE Defined

3/08/2018

Re: IPA NEC Constable Appeal

To whom it may concern,

It has come to my attention that there are those in region 13 that disagree with, and are appealing, Mr. Cushman's determination that Pennsylvania State Constables are police/LEO officers and that the Office of Constable is a "Criminal Justice Agency". Pennsylvania and U.S. statute and case law supports Mr. Cushman's decision and the purpose of this correspondence is to provide you with the information that reinforces this claim. First, before doing so, I would remind you that the term "police" in both state and federal statute is a rather generic term that generally means those with the responsibility to enforce the laws of the state or nation and have the power of arrest. There are many different types of "police" with many different responsibilities, authorities and jurisdictions. Some examples, which are by no means all encompassing, are state, municipal, school, transportation, fish and game, marshals, sheriffs, FBI, DEA, immigration, homeland security, treasury and yes, constables.

One of the reasons that we often hear in contradiction is that constables are not Act 120 certified. If that were the case then a majority of those that are currently considered police would not be, as they are not 120 certified either. The reason for this is that different forms of "police" and law enforcement are required to complete different types of training and certification as dictated by statute. It is not the specific type of training that determines if you are "police" but rather that you complete the specific requirements and certifications for your particular branch and that you have the authority to enforce the laws and to arrest as part of your job. I would equate this to an MDJ. All judges, besides magistrates, in Pa are required to have a law degree to hold their position. Statute does not require an MDJ to have a law degree but does require them to complete a specialized training which differs from other jurists before they can perform their duties. This however does not negate, nor should it, their ability to interpret the law from the bench and rule on guilt or innocence. They are a judges but fill a different role than others just as constables fill their unique role in the "police" community.

On to statutes and case law. I will begin with Pa. statutes, rules, and regulations that define us as police/LEO. Under **Pa Rules of Criminal Procedure Rule 103**, there are at least two pertinent definitions. The first is that of "Law Enforcement Officer," which states that a law enforcement officer is "any person who is by law given the power to enforce the law when acting within the scope of that person's employment," and the definition is that of "Police Officer," which states

Service - Integrity - Commitment

“any person who is by law given the power to arrest when acting within the scope of the person’s employment.” Under **Pa Rules of Juvenile Court Procedure Rule 120**, both of these definitions are reinforced with the exact same verbiage. A constable has both the power to enforce the law and the power to arrest. Under **Pa Rules of Juvenile Court Procedure Rule 213** and **Pa Rules Criminal Procedure Rule 515** —“Execution of Arrest Warrant”— the law states that “A warrant of arrest may be executed at any place within the Commonwealth” and “A police officer shall execute a warrant of arrest,” and “A warrant of arrest shall be executed by a police officer.” Constables have the authority to execute arrest warrants, and this is true only because Constables are within the definition of a police officer. Under **037 Pa Code (State Police Administration of the Lethal Weapon Training Act) Regulation 21.1**, a “Law Enforcement Officer” is defined as “A sheriff, deputy sheriff, constable, deputy constable, detective, police officer of this Commonwealth, or any political subdivision, school district, or municipal authority thereof.” Under the **Title 75 Pa. C.S. 102**, a “Police Officer” is defined as “A natural person authorized by law to make arrests for violations of law.” A constable is so authorized. Under **Title 3 P.S. § 459-102 (The Dog Law)**, police officers are defined as “Any person employed or elected by this Commonwealth, or by any municipality and whose duty it is to preserve peace or to make arrests or to enforce the law. The term includes constables and dog, game, fish and forest wardens.” And finally I direct your attention to **Title 18 Pa. C.S. § 6161** Carrying explosives on conveyances; under part (b) it states: “Powers of crew.—The conductor or person having charge and control of any railroad train, coach, or other conveyance for the carriage of freight or passengers, may arrest any person found violating the provisions of this section and detain such person until reaching some place, where such person may be delivered to a constable or other police authority.”

It is clear from these definitions, and others that I have not cited, that a Pa. Constable meets all the criteria of both a law enforcement and police officer in the Commonwealth of Pennsylvania. Incidentally, a constable is elected to their office as is a sheriff with powers that are almost identical (but constables hold statewide authority, as opposed to countywide authority and are granted statutorily recognized police powers of which sheriffs currently are not) to that of sheriffs, whom are generally accepted as police/LEO.

As an example of federal law, I direct you to **18 U.S.C. Section 926**, the “Law Enforcement Officers’ Safety Act,” in which constables are included with all other law enforcement officers in being able to carry a concealed weapon anywhere in the United States without need of a permit. This was reinforced by a case decided by the **Supreme Court of New York, People v. Rodriguez**, a 15-page decision in which it was determined that a Pa. Constable was not guilty of carrying a firearm illegally because, under the laws of Pennsylvania, a constable is considered a law enforcement officer and therefore is protected under **18 U.S.C. Section 926**.

Regarding case law, I would initially reference a federal case, **Jennifer Galluze v. William R. Miller**, in the United States District Court for the Western District of Pennsylvania, in which, after researching and citing the various statutes and case law for the Commonwealth, the Federal Court came to the conclusion that a Pa. Constable is a police officer. Also, as a matter of Pennsylvania state case law, the **Supreme Court of Pa** stated, in its 1991 decision (attached to this email and highlighted) entitled **In Re Act 147, Petition of Nancy Sobolevitch, Court Administrator of Pennsylvania**, that constables are “peace officers” and “police officers.” In addition to using both definitions, the Supreme Court also stated that “A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it,” and that “It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally.”

Service - Integrity - Commitment

Next to address evidence supporting a constable's power of arrest. Initially I will again refer to the above mentioned **In Re Act 147 Supreme Court Decision**. Wherein they not only clearly define Constables as "police officers" and "peace officers" but state that it is their job to conserve the peace and arrest those that have violated it, and, to enforce the law and carry it out. It also points out that a Constable's job is the same as a DA's, sheriffs and police generally. In the **Stanley Appeal (204 Pa.Super.29 (1964))** decision the Superior Court stated that it is "A constable's authority to execute warrants of arrest, to arrest on sight for breach of the peace, vagrancy and drunkenness, to carry a deadly weapon concealed upon his person and to be present at the polling places in order to keep the peace is not conferred upon private citizens, including private detectives." The question then arises as to what exactly is a "breach of the peace"? The answer comes from the **Commonwealth v. Magaro (175 Pa.Super. 79 (1954))** decision in which the court defined a breach of the peace as "all indictable offenses". An indictable offense as defined by **Title 42 §102** is "An offense other than a summary offense".

The power of arrest is also supported by statute both current and historical. Before I address these statutes I would like to remind that when Title 44 was created it was intended to be a consolidation of constable law (which was not entirely successful) and was not intended to change or diminish the authorities of a constable from previous statute. The sole exception was the addition of training and certification requirements in order to do court work. That being said, **Title 44 Pa. C.S §7158** reads as follows "In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who:(1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness. (2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens. (3) Violates any ordinance of the borough for which a fine or penalty is imposed." Which, I would note, reads almost identically to the powers of arrest granted to municipal police officers (ex-officio constables) in **Title 11 §12005**. Some would interpret this improperly to mean that only borough constables have the power of arrest. Again case law clarifies. In **Delaware Co CCP (Delaware Co Reports) Feb 7, 1944 In Re Borough High Constables**, which was cited in the **Re Act 147** decision in regards to a constables arrest authority, the court ruled "Constables are guardians of the peace within their jurisdiction and may apprehend all breakers of the law and bring them before the proper authorities to answer for their conduct. A constable is more than a township, borough or ward official. His legal acts in civil cases may be performed anywhere in the county and in criminal cases anywhere in the state. The duties of a constable are of a three-fold nature. (1) to enforce the criminal law, (2) to serve writs and other process in civil matters, (3) to perform the statutory and court duties peculiar to the office. High constables in boroughs have the power and authority of constables in townships, and are entitled to the same emoluments. It is the duty of a borough high constable to enforce the criminal laws and arrest or cause the arrest of all persons engaged in the commission of any unlawful act tending to imperil the personal security or to endanger the property of a citizen, or violating any ordinance of the borough." This ruling leaves no doubt that borough constables were never intended to have greater or different powers and authorities than other constables but were to have the SAME powers and authorities as other constables. Additionally, further constable arrest powers are outlined in **Title 44 C.S. §7155** which grants them the authority to arrest for offenders of forest laws.

Many historical statutes and documents also discuss the arrest powers of all constables including previous fee bills such as, but not restricted to, **Act 46 of 1987** which granted fees to

constables for arrest in "any borough, township or political sub-division". As to historical documents, I have attached to this email a copy of "The Powers and Duties of Constables in Pennsylvania", published in 1965 by the Department of Internal Affairs, which extensively lists over many pages the arrest powers of ALL Constables throughout the Commonwealth. It is clear from these decisions, statutes and documents that a Constable has the authority to arrest, on sight, for any violation of the law up to, and including, felonies.

I would also note that, as evidenced by the statutes listed below, other forms of LEO in Pa would not have the powers that they do if not granted the powers of a constable.

71 PS 252 PSP...empowered: (a) to make arrests, without warrant, for all violations of the law,... which they may witness,.. They shall have all the powers and prerogatives conferred by law upon members of the police force of cities of the first class, and upon **CONSTABLES** of the Commonwealth.

71 PS 1791 Police officers ...penal, corrections, mental hospitals...employees to act as police officers...shall have all the powers and prerogatives conferred by law upon **CONSTABLES** of the Commonwealth.

71 PS 1791.1 Police officers ...any building or installation owned by the Commonwealth...employees to act as police officers...shall have all the powers and prerogatives conferred by law upon **CONSTABLES** of the Commonwealth.

11 Pa. C.S. 12005 Powers of Policemen to arrest Third Class City Code (like Harrisburg) Policemen shall be **ex-officio CONSTABLES** of the city,...without warrant and upon view, arrest and commit...

53 PS 46121 (e) Police Borough Code
...as borough policemen, who shall be **ex-officio CONSTABLES** of the borough...without warrant and upon view, arrest and

53 PS 56403 Powers of Policemen First Class Township Code
Policemen shall be **ex-officio CONSTABLES** of the township and may, without warrant and upon view, arrest and commit...

16 PS 1440 County Detectives
(d) County detectives shall be general police officers and shall have the powers conferred on **CONSTABLES** by the laws of this Commonwealth, so far as they relate to criminal laws and procedure.

16 PS 1441 Special County Detectives
Such special detectives shall be general police officers and shall have all the powers conferred on **CONSTABLES** by the existing laws of this Commonwealth, so far as they relate to criminal laws and procedure.

Onto the issue of agency. I refer you to the definitions for agency and criminal justice agency in the PA Right to Know Law, The Pennsylvania Statutory Construction Act and CHRIA (Title 18).

The Pa RTKL defines Commonwealth agency as any of the following:

(1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:

(i) The Governor's Office.

(ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.

(iii) An organization established by the *Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.*

(2) The term does not include a judicial or legislative agency.

Local agency which is defined by the RTKL as any of the following:

(1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.

(2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or **similar governmental entity**.

The Pa Statutory Construction Act defines a local agency as: "[a] government unit other than the Commonwealth government." 42 P.S. §8501.

A "government unit" is defined as "any government agency" which includes "any political subdivision, municipal authority and other local authority, or any officer or agency of any such political subdivision or local authority." 42 P.S. § 102. The Pennsylvania Supreme Court noted that "the Judicial Code does not define 'local authority,' but . . . the Statutory Construction Act describes it as 'a municipal authority or any other body corporate and political created by one or more political subdivisions pursuant to statute.'" *Sphere Drake Insurance Co. v. Philadelphia Gas Works*, 782 A.2d 510, 513 (Pa. 2001) (citing 1 P.S. § 1991).

And, CHRIA (Title 18) defines Criminal Justice Agency as follows:

"Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction **or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function.** **Criminal justice agencies include, but are not limited to:** organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

There is no denying that the Office of Constable is an elected governmental office that has the sole or majority purpose of enforcing the laws of Pennsylvania and clearly fits into the definitions of both agency and criminal justice agency.

In summation, Mr. Cushman's determination that Pa Constables are police/LEO officers, and that the Office of Constable is a criminal justice agency is correct and is supported by a combination of common law, state and federal statute and case law.

Respectfully,

Ian Castaneira
Regional Director, PAFOC

LEOSA

For The Record

As an example of federal law, I direct you to H.R. 218, the "Law Enforcement Officers' Safety Act," in which constables are included with all other law enforcement officers in being able to carry a concealed weapon anywhere in the United States without a permit. This was reinforced by a case decided by the Supreme Court of New York, *People v. Rodriguez*, a 15-page decision in which it was determined that a Pa. Constable was not guilty of carrying a firearm illegally because, under the laws of Pennsylvania, a constable is considered a law enforcement officer and therefore protected under H.R. 218.

US Code

18 USC 926B: Carrying of concealed firearms by qualified law enforcement officers –

"(c) As used in this section, the term "qualified law enforcement officer" means an employee of a governmental agency who-

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and **has statutory powers of arrest** or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(2) **is authorized by the agency to carry a firearm;**

Referral:

US Code Title 18, Sec. 926B. –

<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section926B&num=0&edition=prelim>

18 USC 926B: Carrying of concealed firearms by qualified law enforcement officers

Text contains those laws in effect on January 1, 2023

From Title 18-CRIMES AND CRIMINAL PROCEDURE

PART I-CRIMES

CHAPTER 44-FIREARMS

§926B. Carrying of concealed firearms by qualified law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that-

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified law enforcement officer" means an employee of a governmental agency who-

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law enforcement officer of the agency.

(e) As used in this section, the term "firearm"-

(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(3) does not include-

(A) any machinegun (as defined in section 5845 of the National Firearms Act);

(B) any firearm silencer (as defined in section 921 of this title); and

(C) any destructive device (as defined in section 921 of this title).

Referral: <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title18-section926B&f=treesort&num=0&saved=%25>

Pennsylvania Statutes

Title 18, § 6106 – Firearms not to be carried without a license.

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=61&sctn=6&subsctn=0#>

(a) Offense defined.--

(b) Exceptions.--The provisions of subsection (a) shall not apply to:

- (1) **Constables**, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

...

Title 75, § 102 – Definitions

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=75&div=0&chpt=1&sctn=2&subsctn=0>

"Police officer." A natural person authorized by law **to make arrests for violations of law**.

...

Title 18, § 501 – Definitions

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=5&sctn=1&subsctn=0>

"Peace officer." **Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses**, whether that duty extends to all offenses or is limited to specific offenses...

Section 6106 - Title 18 - CRIMES AND OFFENSES

6106. Firearms not to be carried without a license.

(a) Offense defined.--

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

(2) A person who is otherwise eligible to possess a valid license under this chapter but carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license and has not committed any other criminal violation commits a misdemeanor of the first degree.

(b) Exceptions.--The provisions of subsection (a) shall not apply to:

(1) Constables, sheriffs, prison or jail wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

(2) Members of the army, navy, marine corps, air force or coast guard of the United States or of the National Guard or organized reserves when on duty.

(3) The regularly enrolled members of any organization duly organized to purchase or receive such firearms from the United States or from this Commonwealth.

(4) Any persons engaged in target shooting with a firearm, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the firearm is not loaded.

(5) Officers or employees of the United States duly authorized to carry a concealed firearm.

Referral:

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=61&sctn=6&subsctn=0>

...

Title 75, § 102. Definitions.

"Police officer." A natural person authorized by law to make arrests for violations of law.

Referral:

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=75&div=0&chpt=1&sctn=2&subsctn=0>

...

Title 18, § 501. Definitions.

"Peace officer." Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term "peace officer" shall also include any member of any park police department of any county of the third class.

Referral:

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=5&sctn=1&subsctn=0>

EMERGENCY LIGHTS

Emergency Lights and Equipment

DOCKETS

Docket Number: MJ-03204-TR-0000761-2022 – **Not Guilty** – PA vs. Steven Wiggs for improper lights

Docket Number: CP-51-SA-0001107-2018 – **Quashed, Dismissed** – PA vs. Steven Wiggs for Mounted lights and additional equipment

...

COURT OPINION

"The court concludes that in the context of those cases **a constable is a police officer.**" – GALLUZE v. MILLER Civil Action No. 10-836. –

<https://www.leagle.com/decision/infdco20120326588>

528 Pa. 460 (1991) / Argued April 11, 1991. – "**Simply stated, a constable is a peace officer.**"³ A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it"

Footnote # 3. **The constable is a police officer.**

...

STATUTE:

Title 35, Section 75A01 – "Emergency responder." Any of the following:

(2) **A peace officer.**

"Peace officer." As defined in 18 Pa.C.S. § 501 (relating to definitions).

Title 75, Section 102 Definitions – "Police officer." A natural person authorized by law to make arrests for violations of law.

Title 75, Section 4571. Visual and audible signals on emergency vehicles.

(b) **Police**, sheriff, fire and coroner or medical examiner vehicles.--

(1) Police, sheriff, coroner, medical examiner or fire police vehicles may in addition to the requirements of subsection (a) be equipped with one or more revolving or flashing blue lights. The combination of red and blue lights may be used only on police, sheriff, coroner, medical examiner or fire police vehicles.

**WIGGS
DISPOSITION**

Case Disposition - Steven Wiggs

DOCKET	CHARGE	DATE	DISPOSITION
MJ-03204-TR-0000761-2022	Display improper lights	7/7/2022	Not Guilty
CP-51-SA-0001107-2018	Mounted lights and additional equipment	5/30/2018	Quashed, Dismissed
CP-51-CR-0005916-2018	Firearms not to be carried W/O license, Carry firearms public in Phila	1/17/2019	Quashed
MC-51-CR-0018498-2018	Impersonating an officer	8/20/2018	Dismissed - LOE

Magisterial District Judge 03-2-04

DOCKET

Docket Number: MJ-03204-TR-0000761-2022

Traffic Docket



Commonwealth of Pennsylvania
v.
Steven Ahmad Wiggs

Page 1 of 2

CASE INFORMATION

<u>Judge Assigned:</u>	Magisterial District Judge Alan Roger Mege	<u>Issue Date:</u>	
<u>OTN:</u>		<u>File Date:</u>	05/10/2022
<u>Arresting Agency:</u>	Belfast PSP	<u>Arrest Date:</u>	
<u>Citation No.:</u>	T 9716814-2	<u>Incident No.:</u>	PA 2022-555911
<u>Disposition:</u>	Not Guilty	<u>Disposition Date:</u>	07/07/2022
<u>County:</u>	Northampton	<u>Township:</u>	Lower Saucon Township
<u>Case Status:</u>	Closed		

STATUS INFORMATION

<u>Case Status</u>	<u>Status Date</u>	<u>Processing Status</u>
Closed	07/11/2022	Completed
	07/11/2022	Case Balance Due
	07/07/2022	Completed
	06/06/2022	Awaiting Summary Trial
	05/10/2022	Awaiting Plea

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>			<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Start Time</u>	<u>Room</u>		<u>Status</u>
Summary Trial	07/07/2022	10:00 am		Magisterial District Judge Alan Roger Mege	Scheduled

DEFENDANT INFORMATION

<u>Name:</u>	Wiggs, Steven Ahmad	<u>Sex:</u>	Male
<u>Date of Birth:</u>	09/08/1982	<u>Race:</u>	Black
<u>Address(es):</u>			
Home			
Allentown, PA 18103			

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Participant Name</u>
Arresting Officer	Jones, Daniel P.
Defendant	Wiggs, Steven Ahmad

CHARGES

<u># Charge</u>	<u>Grade</u>	<u>Description</u>	<u>Offense Dt.</u>	<u>Disposition</u>
1 75 § 4571 §§ D	S	Display Impropr Lights	04/30/2022	Not Guilty

Magisterial District Judge 03-2-04

DOCKET

Docket Number: MJ-03204-TR-0000761-2022

Traffic Docket



Commonwealth of Pennsylvania
v.
Steven Ahmad Wiggs

Page 2 of 2

DISPOSITION / SENTENCING DETAILS

<u>Case Disposition</u>	<u>Disposition Date</u>	<u>Was Defendant Present?</u>
Not Guilty	07/07/2022	Yes
<u>Offense Seq./Description</u>	<u>Offense Disposition</u>	
1 Display Impropr Lights	Not Guilty	

ATTORNEY INFORMATION

Private
Name: Ronald L. Clever, Esq.
Representing: Wiggs, Steven Ahmad
Counsel Status: Active
Supreme Court No.: 038811
Phone No.: 610-530-4400
Address: Po Box 3276
Allentown, PA 18106-0276

DOCKET ENTRY INFORMATION

<u>Filed Date</u>	<u>Entry</u>	<u>Filer</u>	<u>Applies To</u>
07/07/2022	Not Guilty	Magisterial District Judge Alan Roger Mege	Steven Ahmad Wiggs, Defendant
06/06/2022	Summons Cancelled	Magisterial District Court 03-2-04	Steven Ahmad Wiggs, Defendant
05/12/2022	Summons Issued	Magisterial District Court 03-2-04	Steven Ahmad Wiggs, Defendant
05/12/2022	First Class Summons Issued	Magisterial District Court 03-2-04	Steven Ahmad Wiggs, Defendant
05/12/2022	Certified Summons Issued	Magisterial District Court 03-2-04	Steven Ahmad Wiggs, Defendant
05/10/2022	Traffic Citation Filed	Magisterial District Court 03-2-04	

CASE FINANCIAL INFORMATION

<u>Case Balance:</u>	\$0.00	<u>Next Payment Amt:</u>				
<u>Last Payment Amt:</u>		<u>Next Payment Due Date:</u>				
		<u>Assessment Amt</u>	<u>Adjustment Amt</u>	<u>Non-Monetary Payment Amt</u>	<u>Payment Amt</u>	<u>Balance</u>
Postage - Case		\$9.00	(\$9.00)	\$0.00	\$0.00	\$0.00

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-SA-0001107-2018
SUMMARY APPEAL DOCKET

Traffic

Commonwealth of Pennsylvania

v.

Steven Ahamd Wiggs

Page 1 of 2

CASE INFORMATION

Judge Assigned:
OTN: LOTN:
Initial Issuing Authority:
Arresting Agency: PSP - Philadelphia
Complaint/Citation No.: P958ZKSKDX7
Case Local Number Type(s)
Originating Docket Number

Date Filed: 04/19/2018
Initiation Date: 01/13/2018
Originating Docket No.: 18001269
Final Issuing Authority:
Arresting Officer: Affiant
Incident Number: 18001269-APL1
Case Local Number(s)
18001269

STATUS INFORMATION

<u>Case Status:</u>	<u>Status Date</u>	<u>Processing Status</u>
Closed	05/30/2018	Completed
	05/02/2018	Awaiting Trial
	04/19/2018	Awaiting Summary Appeal Trial

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Trial	05/30/2018	10:00 am	Courtroom D		Scheduled

DEFENDANT INFORMATION

Date Of Birth: 09/08/1982
City/State/Zip: Allentown, PA 18103

Alias Name

Wiggs, Steven
Wiggs, Steven A.
Wiggs, Steven Ahmad

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	Wiggs, Steven Ahamd

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	2	S	75 § 4571 §§ B.12	Mounted Lights and Additional Equipment	01/13/2018	

DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u> <u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>
<u>Sentence Conditions</u>		
	Defendant Was Present	

Quashed, Dismissed, Demurrer Sustained

Defendant Was Present

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET

Docket Number: CP-51-SA-0001107-2018
SUMMARY APPEAL DOCKET



Traffic

Commonwealth of Pennsylvania
v.
Steven Ahamd Wiggs

Page 2 of 2

DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>	
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			
Trial	05/30/2018	Final Disposition	
1 / Mounted Lights and Additional Equipment	Quashed, Dismissed, Demurrer Sustained	S	75 § 4571 §§ B.12

COMMONWEALTH INFORMATION

Name: Philadelphia County District Attorney's
Office
Prosecutor

Supreme Court No:

Phone Number(s):
215-686-8000 (Phone)

Address:
3 South Penn Square
Philadelphia, PA 19107

ATTORNEY INFORMATION

Name:

Supreme Court No:

Rep. Status:

Phone Number(s):

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	04/19/2018		Wiggs, Steven Ahamd
Notice of Summary Appeal Filed			

1	05/30/2018		Eubanks, Joyce O.
Quashed, Dismissed, Demurrer Sustained			

2	05/30/2018		Feder, Eric
DL-21S to be Prepared			

PTCMD1-04062016 MGD



MARSHA H. NEIFIELD
PRESIDENT JUDGE

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA MUNICIPAL COURT
TRAFFIC DIVISION
800 SPRING GARDEN STREET
P.O. BOX 56301
PHILADELPHIA, PENNSYLVANIA 19130-6301
(855)-868-1675
WWW.COURTS.PHILA.GOV



GARY S. GLAZER
ADMINISTRATIVE JUDGE



18051 01180510000018001

WIGGS, STEVEN
129 W. SUSQUEHANNA ST
ALLENTOWN PA 18103-4130

DATE:

02/20/18



This SUMMONS has been issued in your name with the Philadelphia Municipal Court Traffic Division for the moving violation described below. A copy of the original citation is attached. To respond to this SUMMONS, you must plead GUILTY or NOT GUILTY by:

- 1) Signing ONLY ONE of the Signature lines below AND
- 2) SENDING A PAYMENT EQUAL TO THE FINE AMOUNT

NO signature will be recorded as a Guilty Plea.

Failure to respond within ten (10) days of receipt of this SUMMONS will result in an additional fee of \$25.00 being added to each citation, suspension of your driving license, impoundment of any vehicle you own or drive and ultimately a warrant will be issued for your arrest.

Vehicle Registration KXP0983	State PA	Year/Make/Model FORD	Driver Number PA 30689985
Citation Number P958ZKSKDX7	Date of Violation 01/13/18	Location of Violation S 95 I-95	Section Violated 4571B1
Description of Violation VIS AND AUD SIGNALS			Fine \$151.50

Failure to indicate a plea when forwarding payment will result in a Guilty plea being entered.

IF YOU WISH TO PLEAD GUILTY:

Sign your name on the line below:

IF YOU WISH TO PLEAD NOT GUILTY:

Sign your name on the line below:

If you plead guilty, points or suspensions may be assessed against your driving record.

Your trial date is on the front of your citation. If you do not appear for trial, a trial will be held in your absence.

Indicate day telephone (and new address if applicable) _____

If you need a monthly payment plan you must come to court in person. Submit Certified Check or Money Order made payable to Philadelphia Municipal Court Traffic Division, 800 SPRING GARDEN STREET, P.O. BOX 56301, PHILA., PA 19130-6301. To ensure proper credit, please write citation number(s) on your check or money order. Payments may be made in person between the hours of 8:30 AM and 7:30 PM. Mastercard, Visa, Discover and Mac are also accepted. Mac payments can only be made in person at the above address. If paying by Mastercard, Visa, or Discover please indicate by checking the appropriate box and including your Account Number, Expiration Date, Payment Amount, and Signature. If you are Hearing Impaired, please contact Philadelphia Municipal Court Traffic Division at TDD 215-786-1740. NO CELLULAR PHONES OR WEAPONS ARE PERMITTED IN THE COURTHOUSE.

ACCOUNT NUMBER

EXPIRATION DATE PAYMENT AMOUNT \$



Gary S. Glazer

AUTHORIZED SIGNATURE

ADMINISTRATIVE JUDGE

25
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS

Commonwealth of Pennsylvania

Docket No. CP-51-SA-1107

2018

WIGGS, STEVEN AHAMD
Defendant

ORDER - SUMMARY APPEAL

AND NOW, this 30TH day of MAY, 2018, it is hereby ordered, adjudged and decreed that:

~~APPEAL HEARING~~ continued to: Judgment of Acquittal P9582KSK017

NOT GUILTY. Upon conclusion of the trial, the defendant is found **NOT GUILTY**. The Municipal Court Traffic Division shall apply any collateral posted by defendant to any fees, fines and costs owed by defendant and shall refund the balance, if any.

DISMISSAL. The Law Enforcement Officer having failed to appear and testify, all charges are dismissed.

DEFENDANT FAILED TO APPEAR, MANDATORY SENTENCING. The defendant having failed to appear, the appeal is dismissed, the judgment of the Municipal Court Traffic Division is entered as the judgment of the Court of Common Pleas, a bench warrant is issued for the defendant's arrest, and execution of the sentence shall commence immediately upon defendant's arrest. This order shall authorize Defendant's commitment. The defendant is sentenced to serve a period of incarceration as follows: a minimum of ___ days and a maximum of ___ days as more fully provided in the attached Municipal Court Traffic Division order.

DEFENDANT FAILED TO APPEAR, OTHER THAN MANDATORY SENTENCE. The defendant having failed to appear, the appeal is dismissed, and the judgment of the Municipal Court Traffic Division is entered as the judgment of the Court of Common Pleas, as follows:

Citation No.	Guilty Section	Total Fines & Costs

The defendant is ordered to pay the outstanding fines and costs.

APPEAL WITHDRAWN - The defendant having withdrawn the appeal, the judgment of the Municipal Court Traffic Division is entered as the judgment of the Court of Common Pleas, as follows:

Citation No.	Guilty Section	Total Fines & Costs

and is ordered to pay the outstanding fines and costs.

GUILTY, MANDATORY SENTENCING. The defendant is found **GUILTY**, is sentenced to serve a period of incarceration as follows: a minimum of ___ days and a maximum of ___ days, and is ordered to pay the outstanding fines and costs totaling \$ _____. The defendant shall appear for execution of sentence on _____, 20__ at _____ AM/PM in Courtroom _____, 800 Spring Garden Street, Philadelphia, PA 19123 unless the defendant files a notice of appeal within 30 days of today's date.


GUILTY, OTHER THAN MANDATORY SENTENCE. The defendant is found **GUILTY** as noted below:

Citation No.	Guilty Section	Total Fines & Costs

and is ordered to pay the outstanding fines and costs.

Defendant has the right to appeal to the Superior Court within 30 days of the imposition of sentence. If an appeal is filed, the execution of sentence will be stayed and the trial judge may set bail. See Pa.R.Crim.P. 462 and 1037.

Jurisdiction is remanded to the Municipal Court Traffic Division pursuant to Pa.R.Crim.P. No. 1037.

BY THE COURT:

Honorable

Quick Process

- All: 1 (\$0.00)
- Open Tickets: (\$0.00)
- Delq Tickets: (\$0.00)
- Marked/Held Tickets: (\$0.00)
- IPP Tickets: (\$0.00)

Quick Process

QUICK PROCESS

Customer

Wiggs Steven
 129 W. Susquehanna St
 Apt #2
 Allentown, PA 18103-0000
 201-456-0706
Address Source: Registry
Ticket Type: Move
License: PA30689985
Date of Birth: 09/08/1982

Financial Summary

Ticket Amount: \$0.00
 Fee Amount: \$0.00
Total Due: \$0.00
 Unapplied Amt: \$0.00

User ID: P97HP005

Customer Status

Phone
 Cancelled IPP

<input checked="" type="checkbox"/> All <input type="checkbox"/> Alerts	Ticket #	Trial Judge	Hearing Date/Time	Disposition Date/Time	Disposition/ User ID	Suspend/ Suspend Until	Case #/ Plea	Reduction/ Total Due
<input type="checkbox"/>	P958ZKSKDX7	JE	05/30/2018 10:00AM	05/30/2018 11:42AM	117-APL-ACQUITTAL P97HP005	099-COURT APPR 05/30/2019	18001269 G	\$184.50 50.00

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET



Docket Number: CP-51-CR-0005916-2018

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Steven A. Wiggs

Page 1 of 5

CASE INFORMATION

Judge Assigned: Johnson, Shanese I. Date Filed: 08/21/2018 Initiation Date: 08/21/2018
OTN: U 130758-5 LOTN: Originating Docket No: MC-51-CR-0018498-2018
Initial Issuing Authority: William Austin Meehan Jr. Final Issuing Authority:
Arresting Agency: PSP - Philadelphia Arresting Officer: Affiant
Complaint/Citation No.: 1806030031-0018498 Incident Number: 1806030031
Case Local Number Type(s) Case Local Number(s)
 Originating Docket Number MC-51-CR-0018498-2018
 District Control Number 1806030031
 Originating Document Number 1806030031-0018498

STATUS INFORMATION

Case Status: Closed Status Date Processing Status Arrest Date: 07/18/2018
 01/17/2019 Completed
 09/04/2018 Awaiting Pre-Trial Conference
 08/22/2018 Awaiting Formal Arraignment
 08/21/2018 Awaiting Filing of Information
Complaint Date: 07/13/2018

CALENDAR EVENTS

<u>Case Calendar</u>	<u>Schedule</u>	<u>Start</u>	<u>Room</u>	<u>Judge Name</u>	<u>Schedule</u>
<u>Event Type</u>	<u>Start Date</u>	<u>Time</u>			<u>Status</u>
Formal Arraignment	09/04/2018	11:00 am	1104	Trial Commissioner Linda Mariani	Scheduled
Pre-Trial Conference	09/27/2018	9:00 am	905	Judge Scott DiClaudio	Scheduled
Pretrial Bring Back	10/25/2018	9:00 am	905	Judge Scott DiClaudio	Continued
Pretrial Bring Back	11/29/2018	9:00 am	905	Judge Scott DiClaudio	Continued
Pretrial Bring Back	01/17/2019	9:00 am	905	Judge Scott DiClaudio	Scheduled
Motions Hearing	07/12/2019	9:00 am	704	Judge Shanese I. Johnson	Scheduled
Motions Hearing	08/08/2019	9:00 am	704	Judge Shanese I. Johnson	Scheduled

DEFENDANT INFORMATION

Date Of Birth: 09/08/1982 City/State/Zip: Allentown, PA 18103

Alias Name

Wiggs, Steven
Wiggs, Steven Ahamd
Wiggs, Steven Ahmad

CASE PARTICIPANTS

<u>Participant Type</u>	<u>Name</u>
Defendant	Wiggs, Steven A.

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET

Docket Number: CP-51-CR-0005916-2018

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Steven A. Wiggs

Page 2 of 5

BAIL INFORMATION

Wiggs, Steven A.

Nebbia Status: None

<u>Bail Action</u>	<u>Date</u>	<u>Bail Type</u>	<u>Percentage</u>	<u>Amount</u>	<u>Bail Posting Status</u>	<u>Posting Date</u>
Set	07/18/2018	Unsecured		\$25,000.00		

CHARGES

<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	1	F3	18 § 6106 §§ A1	Firearms Not To Be Carried W/O License	04/19/2018	U 130758-5
2	2	M1	18 § 6108	Carry Firearms Public In Phila	04/19/2018	U 130758-5

DISPOSITION SENTENCING/PENALTIES

Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>	
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			
Lower Court Proceeding (generic)			
Preliminary Hearing	08/20/2018	Not Final	
1 / Firearms Not To Be Carried W/O License	Held for Court	F3	18 § 6106 §§ A1
2 / Carry Firearms Public In Phila	Held for Court	M1	18 § 6108
Proceed to Court Defendant Was Not Present			
Information Filed	08/22/2018	Not Final	
1 / Firearms Not To Be Carried W/O License	Proceed to Court	F3	18 § 6106 §§ A1
2 / Carry Firearms Public In Phila	Proceed to Court	M1	18 § 6108
Quashed			
Pretrial Bring Back	01/17/2019	Final Disposition	
1 / Firearms Not To Be Carried W/O License	Quashed	F3	18 § 6106 §§ A1
2 / Carry Firearms Public In Phila	Quashed	M1	18 § 6108

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET

Docket Number: CP-51-CR-0005916-2018

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Steven A. Wiggs

Page 3 of 5

COMMONWEALTH INFORMATION

Name: Philadelphia County District Attorney's
Office
Prosecutor

Supreme Court No:

Phone Number(s):
215-686-8000 (Phone)

Address:

3 South Penn Square
Philadelphia, PA 19107

ATTORNEY INFORMATION

Name: Benjamin John Simmons
Private

Supreme Court No: 314855

Rep. Status: Active

Phone Number(s):
215-551-9099 (Phone)

Address:

Defino Law Associates Pc
2541 S Broad St
Philadelphia, PA 19148

Representing: Wiggs, Steven A.

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	08/21/2018		Court of Common Pleas - Philadelphia County
Held for Court			
1	08/22/2018		Krasner, Larry
Information Filed			
1	08/24/2018		Simmons, Benjamin John
Motion to Quash			
1	08/30/2018		Simmons, Benjamin John
Waiver of Appearance at Arraignment			
3	09/04/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
1	09/05/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
2	09/27/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	09/27/2018		DiClaudio, Scott
Order Granting Motion for Continuance			

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET

Docket Number: CP-51-CR-0005916-2018

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Steven A. Wiggs

Page 4 of 5

ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
4	09/27/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	10/25/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	10/25/2018		DiClaudio, Scott
Court Request For Continuance Case Held Under Advisement			
3	11/29/2018		Court of Common Pleas - Philadelphia County
Hearing Notice			
4	11/29/2018		DiClaudio, Scott
Court Request For Continuance Case Held Under Advisement			
3	01/17/2019		DiClaudio, Scott
Quashed			
1	06/18/2019		Johnson, Shanese I.
Order to Comply			
1	06/28/2019		Rodriguez, Emily Jane
Entry of Appearance			
1	07/10/2019		Rodriguez, Emily Jane
MOTION FOR RECONSIDERATION OF ORDER FOR RETURN OF PROPERTY			
3	07/12/2019		Court of Common Pleas - Philadelphia County
Hearing Notice			
3	07/23/2019		Court of Common Pleas - Philadelphia County
Hearing Notice			

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

DOCKET

Docket Number: CP-51-CR-0005916-2018

CRIMINAL DOCKET

Court Case



Commonwealth of Pennsylvania

v.

Steven A. Wiggs

Page 5 of 5

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1	08/06/2019		Philadelphia County District Attorney's Office
Motion to Reconsider			

1	08/08/2019		Johnson, Shanese I.
Motion for Reconsideration			

CASE FINANCIAL INFORMATION

Last Payment Date: 08/27/2018

Total of Last Payment: -\$12.50

Wiggs, Steven A. Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
Costs/Fees					
Motion Filing Fee (Philadelphia)	\$12.50	(\$12.50)	\$0.00	\$0.00	\$0.00
Motion Filing Fee (Philadelphia)	\$12.50	\$0.00	\$0.00	\$0.00	\$12.50
Costs/Fees Totals:	\$25.00	(\$12.50)	\$0.00	\$0.00	\$12.50
Grand Totals:	\$25.00	(\$12.50)	\$0.00	\$0.00	\$12.50

** - Indicates assessment is subrogated



**First Judicial District of Pennsylvania
Court Summary**

Wiggs, Steven A.
Allentown, PA 18103
Aliases:
STEVEN WIGGS
Steven A. Wiggs
Steven Ahmad Wiggs
Steven Ahmad Wiggs

DOB: 09/08/1982

Sex: Male
Eyes: Brown
Hair: Black
Race: Black

Closed

Philadelphia
CP-51-CR-0005916-2018 Proc Status: Completed DC No: 1806030031 OTN:U1307585
Arrest Dt: 07/18/2018 Disp Date: 01/17/2019 Disp Judge: DiClaudio, Scott
Def Atty: Simmons, Benjamin John - (PR)

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 6106 §§ A1	F3	Firearms Not To Be Carried W/O License	Quashed
2	18 § 6108	M1	Carry Firearms Public In Phila	Quashed
99999	18 § 4912	M2	Impersonating A Public Servant	Disposed at Lower Court

CP-51-CR-0008072-2018 Proc Status: Completed DC No: 1806042714 OTN:U1391014
Arrest Dt: 09/27/2018 Disp Date: 06/18/2019 Disp Judge: Johnson, Shanese I.
Def Atty: Simmons, Benjamin John - (PR)

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 6106 §§ A1	F3	Firearms Not To Be Carried W/O License	Nolle Prossed
2	18 § 6108	M1	Carry Firearms Public In Phila	Nolle Prossed
3	18 § 4912	M2	Impersonating A Public Servant	Nolle Prossed

CP-51-SA-0001107-2018 Proc Status: Completed DC No: OTN:
Arrest Dt: Disp Date: 05/30/2018 Disp Judge: Eubanks, Joyce O.

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
1	75 § 4571 §§ B.12	S	Mounted Lights and Additional Equipment	Quashed, Dismissed, Demurrer Sustained

MC-51-CR-0018498-2018 Proc Status: Completed DC No: 1806030031 OTN:U1307585
Arrest Dt: 07/18/2018 Disp Date: 08/20/2018 Disp Judge: Meehan, William Austin Jr.
Def Atty: Simmons, Benjamin John - (PR)

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 6106 §§ A1	F3	Firearms Not To Be Carried W/O License	Held for Court
2	18 § 6108	M1	Carry Firearms Public In Phila	Held for Court
3	18 § 4912	M2	Impersonating A Public Servant	Dismissed - LOE

MC-51-CR-0024936-2018 Proc Status: Completed DC No: 1806042714 OTN:U1391014
Arrest Dt: 09/27/2018 Disp Date: 11/13/2018 Disp Judge: Frazier-Lyde, Jacquelyn
Def Atty: Simmons, Benjamin John - (PR)

CPCMS 3541

Printed: 6/27/2019 12:02 PM

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Please note that if the offense disposition information is blank, this only means that there is not a "final disposition" recorded in the Common Pleas Criminal Court Case Management System for this offense. In such an instance, you must view the public web docket sheet of the case wherein the offense is charged in order to determine what the most up-to-date disposition information is for the offense.

Police Officers

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

In the Criminal Division of the Court

vs.

Case No. CP-51-CR-0005916-2018

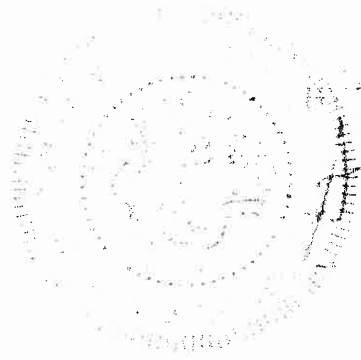
--- and ---

STEVEN A. WIGGS

Case No. CP-51-CR-0008072-2018

ORDER FOR RETURN OF PROPERTY

NOW, this 18th day of June, it is hereby ORDERED that the Pennsylvania State Police and the Commonwealth shall ^{forthwith} ~~immediately~~ RETURN to the Defendant—in the same condition as when they were taken—his vehicle that is marked “Pennsylvania State Constable—Police,” both of his firearms, and all other personal property that the Pennsylvania State Police or the Commonwealth took from him in connection with either of the arrests—namely, the arrest in Case No. CP-51-CR-0005916-2018, and the arrest in Case No. CP-51-CR-0008072-2018.



THE COURT:

[Handwritten signature]

J.

CONSTABLE LEGISLATION

Constable Legislation 1705 - 2009

2009 Act 49 PL 494 Constable re-codification Gov. Rendell, October 9, 2009. (added 44 Pa. C. S. 7101 – 7178)

Act 49-2009 Section 4 (4) (ii) Except as set forth in sub-paragraph (iii), any difference in language between 44 Pa. C. S. Ch 71 (Constables) ...and the statutory provisions repealed in section 4 (2) of this act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the statutory provisions repealed in section 4 (2) of this act.

2006 Act 59 PL 277 Constable Fee Bill, Gov. Rendell, June 29, 2006. (amended 42 Pa. C. S. 2950 (Fees))

2004 Act 233 PL 1778 Constable Fees – permits the CETB to use surplus funds from the restricted account to reimburse constable for costs associated with required continuing education. Gov. Rendell, December 1, 2004.

now 44 Pa. C. S. 7149 (Restricted account)

1998 Act 61 PL 446 Repeal of fees to constables regarding order of relief of a pauper. Gov. Ridge, May 15, 1998.

1994 Act 44 PL 265 Constable Fee Bill Gov. Casey, June 15, 1994. (added 42 Pa. C. S. 2941 – 2950, formerly 13 P. S. 61-61.9))

1992 Act 102 PL 689 Constable Fee Bill, mandates training by PCCD, CETB Gov. Casey, July 9, 1992.

PA Supreme Court ruled Act 147-1990 unconstitutional (In re Act 147 of 1990, A. 2d 985, 501 Pa. 460, 1991)

1990 Act 147 PL 574 Constable Fee Bill, mandates training by AOPC, MJEB Gov. Casey, November 29, 1990

1987 Act 46 PL 243 Constable Fee Bill Gov. Casey, July 9, 1987.

1974 Act 237 PL 710 Constable Fee Bill Gov. Shapp, October 10, 1974

1974 Act 78 PL 275 Constable Fee Bill Gov. Shapp, May 9, 1974.

1972 Act 344 PL 1641 Constable Fee Bill Gov. Shapp, December 28, 1972.

see also Opinions of the Attorney General – Official Opinion # 21, March 14, 1973.

1965 Act 341 PL 714 Constable Fee Bill Gov. Scranton, November 10, 1965.

1961 Act 632 PL 1486 Constable Fee Bill Gov. Lawrence, September 19, 1961.

1951 Act 179 PL 931 Constable Fee Bill Gov. Fine, June 28, 1951.

1947 Act 331 PL 773 Constable Fee Bill Gov. Duff, June 21, 1947.

1919 Act 145 PL 274 Constable Fee Bill Gov. Sproul, May 23, 1919.

1917 Act 401 PL 1158 Constable Fee Bill Gov. Brumbaugh, July 20, 1917.


1899 Act 1 PL 3 Constable Fee Bill Gov. Stone, February 17, 1899.

1893 Act 71 PL 117 Constable Fee Bill Gov. Pattison, May 23, 1893.

1879 Act 54 PL 56 Constable Fee Bill Gov. Hoyt, May 19, 1879.

1878 Act 56 PL 40 Constable Fee Bill Gov. Hartranft, May 3, 1878.

1876 Act 126 PL 154 Constable Fee Bill Gov. Hartranft, May 8, 1876.

 **1996 Act 151 PL** Dog Law definition of 'police officer' – ...the term includes constables and dog, game, fish and forest wardens. (changed from 'state constabulary') Gov. Ridge, Dec 11, 1996.

1980 Act 177 PL 1074 to destroy and to prevent the spread of the weed known as Canada thistles, the weed known as chicory or succory or blue daisy, the weed known as Johnson grass, or the weed known as marihuanna ... Section 3. ...whenever it shall come to the knowledge of either the supervisor or constable of the existence of any such weeds thereon, it shall be his duty to notify the owner or agents of

said land in writing, giving 10 days' notice, to cut or destroy the same... Gov. Thornburgh, October 16, 1980.

current statute 3 P. S. 243 (repealed as to 3 P. S. 241 and 242 by Act 74 PL 228 April 7, 1982)
1978 Act 170 PL 883 Public Official and Employee Ethics Law, established State Ethics Commission.

Section 10. Constables Gov. Shapp, October 4, 1978.

Repealed Act 49-2009, Section 4 (2) (xxxvi)

now 44 Pa. C. S. 7131 (b) (Public office)

Opinion of the Commission 00-008 September 21, 2000.

92-008 December 10, 1992.

80-018 March 12, 1980.

1976 Act 121 PL 475 An act clarifying the powers of certain law enforcement officers. Peace officers; powers and duties. Constables, county detectives, sheriffs, deputy sheriffs, waterway patrolmen, and game protectors shall perform all those duties authorized or imposed on them by statute. Gov.

Shapp, June 29, 1976. (law by motion to override the Governor's Veto)

Repealed Act 49-2009, section 4 (2) (xxxv) (as to constables only).

now 44 Pa. C. S. 7151 (General imposition of duties and grant of powers), formerly 13 P. S. 40

(transferred from 16 P. S. 1216)

1970 Act 2 PL 2 The office of constable in the City of Philadelphia is hereby abolished and the terms of office of all incumbents are hereby terminated. The duties heretofore performed by constables under the act of April 6, 1951 (PL 69), known as "The Landlord and Tenant Act of 1951," shall be performed by the landlord and tenant officers of the Municipal Court of Philadelphia. Gov. Shafer, February 10, 1970.

In response to the Constitution of 1968, Article V (The Judiciary),

Section 6 and 7 (which eliminates justices of the peace in Philadelphia)

Repealed Act 49-2009, Section 4 (2) (xxxiv)

now 44 Pa. C. S. 7103. (Cities of the first class), formerly 13 P. S. 15.

1965 Act 581 PL 1656 Borough Code Section 1126 Office of Police and Constable not incompatible. Gov. Scranton, February 1, 1966. Repealed Act 49-2009.

1959 Act 309 PL 814 That the qualified electors of the several townships and boroughs, in the county of Cameron, shall at their elections for township officers, in addition to the officers now elected, elect one person, to be called constable and collector, who shall have all the powers and authority, and be subject to all the duties and penalties, which the regular constable of said townships and boroughs now, or may hereafter, have, or be liable to, and shall, in addition thereto, act as collector for their respective townships and boroughs, and shall be compelled to receive...all the state, county and township or borough taxes, whether laid for road, school, or any other purpose... Gov. Lawrence, September 8, 1959.

1959 Act 32 PL 58 Vehicle Code 'Peace Officer' – A sheriff, deputy sheriff, constable, member of the PSP, state highway patrolman, or other police officer, vested with authority of arrest, and such officers and soldiers... Section 1204. Arrests on View or With Warrant – Peace officers, when in uniform and displaying a badge or other sign of authority, may arrest, upon view, any person violating any provisions of this act, where the offense is designated a felony or misdemeanor, or in cases causing or contributing to an accident resulting in injury or death to any person... Gov. Lawrence, April 29, 1959.


1956 Act 500 PL 1510 Disease Prevention and Control Law Section 19. (b) Any person afflicted with communicable tuberculosis, quarantined or caused to be quarantined under the provisions of this act in a state institution, who leaves without the consent of the medical director of the institution may be apprehended and returned thereto by any sheriff, constable or police officer or any health officer, at the expense of the county. Gov. Leader, April 23, 1956.

current statute 35 P. S. 521.19 Penalties, prosecutions and disposition of fines

1955 Act 441 PL 1382 It shall not be lawful for any constable to hold or exercise the office of justice of the peace or alderman. Gov. Leader, April 3, 1955.

Repealed Act 49-2009, Section 4 (2) (xxxii)
now 44 Pa. C. S. 7131 (Public office)

1953 Act 230 PL 723 Second Class County Code Section 2180 Transportation license for vehicles (transporting garbage)- ...license shall be exhibited to any county or municipal police officer, county road caretaker, constable, deputy constable, or other peace officer, upon his request. Gov. Leader, July 28, 1953.

 **1951 Act 558 PL 1996 Vehicle Code** – ‘Peace officer’ – A sheriff, deputy sheriff, constable, member of the PSP, state highway patrolman, or other police officer vested with authority of arrest. Gov. Fine, January 14, 1952.

1951 Act 164 PL 662 prohibits a police officer of a third class city from holding the office of constable. ...policemen shall have authority to serve and execute ...all criminal process ... for violations of city ordinances... and shall charge the same fees and costs as pertain by law to the constables of the city for similar services...paid into the city treasury. Gov. Fine, June 28, 1951.

current statute 53 P. S. 37001 (Third Class City Code)(...qualifications of policeman).

current statute 53 P. S. 37005 (Third Class City Code) (Powers of Policemen to Arrest)

current statute 53 P. S. 37006 (Third Class City Code)(Service of process; fees; payment into treasury)

current statute 53 P. S. 37008 (Third Class City Code) (Extra Compensation prohibited)

1951 Act PL 533 under the Mental Health Act ... section 611 (b) leaves of absence may be terminated by the superintendent who may, if necessary, authorize the apprehension and return of the patient by any sheriff, constable, or police officer, who shall apprehend and return the patient. Gov. Fine, June 12, 1951.

see also Opinions of the Attorney General – Official Opinion # 649, June 18, 1954.

current statute 50 P. S. 4425 (Escapes).

1951 Philadelphia Home Rule Charter PL 2227 April 17, 1951

Article V Chapter 2 (Police Department) Section 5-201 Powers of Policemen


The members of the Philadelphia Police shall have all the powers conferred by statute and ordinance upon members of the police force of cities of the first class and upon constables of the Commonwealth of Pennsylvania.

1951 Act 14 PL 57 Fireworks Act Section 5. The Pennsylvania State Police, or any sheriff, police officer or constable shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored or held in violation of this act. Gov. Fine, March 22, 1951.

Repealed 2004 Act 204 PL 1598 Gov. Rendell, November 30, 2004. (Section 7.1; as to enforcement by constables)

current statute 35 P. S. 1278 (PSP, any sheriff or police officer...shall confiscate fireworks in violation of this act)

1951 Act 1 PL 3 requirements for constables to be placed on primary election ballot. Gov. Fine, March 6, 1951.

 **1949 Act 568 PL 1903 Pa Code of Military Justice Section 5201 Apprehension-** (b) ...any peace officer authorized by law, may apprehend persons subject to this part upon reasonable belief that an offense has been committed... Section 5202 Apprehension of person absent without leave – Any civil officer having authority to apprehend offenders under the laws of the United States or of a state...may summarily apprehend any person subject to this part absent without leave... Section 5204 Restraint of person charged with offenses- (b) The convening authority of any court-martial shall have the power to issue warrants of apprehension directed to the sheriff or any constable or peace officer within the proper county to apprehend persons... Gov. Duff, May 27, 1949.

as amended: Act 192 PL 1506 Gov. Corbett, October 24, 2012; Act 91 PL 185 Gov. Shapp, August 1, 1975; Act 272 PL 561 Gov. Shafer, November 24, 1967.

current statute 51 Pa. C. S. 5201 (a) (e), 5202, 5204

1949 Act 569 PL 1955 First Class Township Code Section 1401. Appointment. ... No policeman shall at the same time hold any public office other than constable and health officer. Section 1403. Powers of Policemen- Policemen shall be ex-officio constables of the township and may, without warrant and on view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous, or disorderly conduct or drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any of the ordinances of the township for the violation of which a fine or penalty is imposed Section 1404. Service of Process; Fees. Policemen shall have authority to serve and execute all criminal process for the violation of the township ordinances, which may be issued by any justice of the peace of the township, and shall charge the same fees and costs as pertain by law to constables for similar services, but such fees and costs shall be paid shall be paid to the township treasurer for the use of the township... Gov. Duff, May 27, 1949.

revision of Act 331 PL 1206, Gov. Pinchot, June 24, 1931.

current statute 53 P.S. 56401 (First Class Twp Code) (Appointment, compensation & training of policemen)

current statute 53 P.S. 56403 (First Class Twp Code) (Powers)

current statute 53 P.S. 56404 (First Class Twp Code) (Service of process; fees)

current statute 53 P.S. 56408 (First Class Twp Code) (Not to Receive Fees)

1947 Act PL 1481 a police officer in a second class township is ex-officio constable of the township but is prohibited from accepting any other fees in connection with the duties of office except public awards and legal mileage allowed to constables for traveling expenses. Gov. Duff, July 10, 1947.

1945 Act 240 PL 584 The terms of constables... shall be for six years. Whenever a constable shall be appointed by the court...shall serve for the unexpired term. (formerly 13 P. S. 14). Gov. Martin, May 16, 1945.

1945 Act 10 PL 17 Section 1207. The constable...shall be present at the polling place... at each primary and election during the continuance thereof, and while the votes are being counted, for the purpose of preserving the peace...for performing such services shall receive not less than \$ 5.00, nor more than \$ 10.00... Gov. Martin, March 2, 1945.

1943 Act PL 821 Second Class County Code Section 3104 Duties and powers- The fire marshal... shall also have power to call upon any constable, policeman, or citizen of any city, ward, borough or township in the county to aid and assist him... Section 3105 Arrest and commitment or bail- ...fire marshal... shall have the same power to issue a warrant, directed to any constable of any ward, borough or township of the county, for the arrest... Section 3107 Disobedience of Orders; Refusal to execute warrant; Hindering or obstructing marshal- Any constable, policeman, watchman or citizen who shall refuse or neglect to obey the orders or directions of the fire marshal... Gov. Martin, June 3,

1943. Amended Act 230 PL 723 Gov. Leader, July 28, 1953.

current statute 16 P. S. 6104 Attendance at fires; duties and powers; aid and assistance; investigations

1943 Act 280 PL 637 The terms of constables hereafter elected in cities of the second, second class A and third class, boroughs and townships, shall be for six years. Whenever a constable shall be appointed by the court as provided by existing laws, the constable so appointed shall serve for the unexpired term. Gov. Martin, May 26, 1943.


Repealed Act 49-2009, Section 4 (2) (xxxi).

now 44 Pa. C. S. 7111. (Term of office), formerly 13 P. S. 14.

1943 Act 143 PL 306 Penal Code Section 314. Obstructing officer in the execution of process – Whoever knowingly, willfully and forcibly obstructs, resists or opposes any officer or other person duly authorized, in serving or executing any such legal process or order, or in making a lawful arrest without warrant, or assaults or beats any officer or person duly authorized, in serving or executing any such legal process or order or for and because of having served or executed the same; or in making a lawful arrest without warrant; or rescues another in legal custody; or whoever being required by any officer, neglects or

refuses to assist him in the execution of his office in any criminal case, or in the preservation of the peace, or in apprehending and securing any person for a breach of the peace, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment not exceeding one year or to pay a fine not exceeding \$ 500, or both. Gov. Martin, May 21, 1943.

1943 Act 58 PL 111 Vehicle Code Section 1211 – Limitation of authority for Pa State Policemen – Such employees of the Commonwealth as are designated PSP are hereby declared peace officers, and are hereby given police power and authority throughout the Commonwealth to arrest on view, on Sunday or any other day, when in uniform, without write, rule, order, or process, any person violating any provisions of this act, in addition to any other power or authority conferred by law. Gov. Martin, April 28, 1943.

 **1943 Act 48 PL 74 Vehicle Code – ‘Peace Officer’** – A sheriff, deputy sheriff, constable, member of PSP, state highway patrolman, or other police officer, vested with authority of arrest. Gov. Martin, April 26, 1943.


1939 Act 375 PL 872 Penal Code


Section 311. Officer voluntarily permitting convict to escape - Any sheriff, coroner, keeper of any jail, constable or other officer, having lawful custody of any offender, convicted or accused of crime, who voluntarily permits or suffers such offender to escape and go at large, is guilty of a felony, and on conviction shall be sentenced to pay a fine not exceeding \$ 2,000, or to undergo imprisonment not exceeding five years, or both, and be dismissed from office.

Section 313. Escape of prisoner through failure to execute process – An sheriff, coroner, or keeper of a jail, constable or other officer, who willfully, and without reasonable cause, refuses or omits to execute any lawful process directed to him, requiring the apprehension or confinement of any person charged with, or convicted of an offense, by which such person shall escape, is guilty of a misdemeanor, and on conviction shall be sentenced to imprisonment not exceeding two years, or to pay a fine not exceeding \$ 1,000, or both.


Section 640. Pollution of drinking water - Whoever willfully enters upon enclosed land on which is erected any dam, reservoir, pond, or other artificial means for storing water used by the public for drinking purposes, and pollutes or attempts to pollute such water, is guilty of a misdemeanor, and on conviction thereof, shall be sentenced to pay a fine not exceeding \$ 500, or be imprisoned not exceeding 1 year, or both. Any duly constituted watchman of any water company, or any constable or policeman, is hereby empowered, upon his own view of any such trespass, to make arrests and bring before any magistrate any offender found violating this section.

Section 833. Refusal to pay over money collected on execution – Whoever, being a constable, receives money by virtue of an execution or other process, and neglects or refuses, upon application to him made by the party interested, to pay the amount thereof to the party entitled to receive the same, or to his agent or legal representative, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding \$ 100, and shall stand committed until the money so withheld shall be paid, together with the interest, fine and costs, and moreover shall, for seven years thereafter, be incapable of holding the office of constable, or the appointment of deputy constable.

 **Section 933.** Cutting or injuring trees in forest reserves – Any constable, police officer, game protector, fish warden, or forest officer is hereby authorized to arrest without warrant any person so found cutting down, injuring, destroying, or removing such trees or shrubs. Said arrest may be made on any day, including Sunday.

 **Section 948.** Power to make arrests in cruelty to animal cases – Any policeman or constable, or any agent of any society...shall, upon his own view of any offense against sections 942-947 (cruelty to animals), of this act, make an arrest, and bring before a magistrate the offender found violating such

provisions, and any policeman or constable, or any agent of any society, as aforesaid, shall also make arrests of such offenders on warrants duly issued according to law, when such offense is not committed in view of said officer, constable or agent. Gov. James, June 24, 1939.

 **1937 Act 447 PL 2329 Vehicle Code – ‘Peace Officer’** – A sheriff, deputy sheriff, constable, member of PSP, state highway patrolman, or other police officer, vested with authority of arrest. Gov. Earle, June 29, 1937.

1937 Act 320 PL 1333 (The Election Code) Section 412.2 (g), 1207, 1822. be present at the polling places...preserve the peace... serve at all elections. Gov. Earle, June 3, 1937.
repeated in subsequent legislative updates of the Election Code: Act PL 166 Gov. James, May 17, 1939; Act PL 17 Gov. Martin, March 2, 1945; Act PL 617 Gov. Duff, April 20, 1949; Act 29 PL 83 Gov. Shafer, June 19, 1969; Act 122 PL 366 Gov. Shapp, June 19, 1974; Act 124 PL 523 Gov. Shapp, July 1, 1976; Act 108 PL 374 Gov. Thornburgh, May 5, 1982; Act 48 PL 482 Gov. Ridge, Oct 31, 1997; Act 3 PL 18 Gov. Schweiker, Jan 31, 2002; Act 150 PL 1246 Gov. Schweiker, December 9, 2002; Act 45 PL 178 Gov. Rendell, May 11, 2006.


Repealed Act 49-2009, Section 4 (2) (xxviii), (xxix), (xxx)
now 44 Pa. C. S. 7152. (Elections); 7163 (Election services); 7175 (Criminal penalty)

1935 Act 219 PL 621 in serving subpoenas issued by the district attorney, returning unserved subpoenas, mileage fees, and approval of the county controller for payment of service. Gov. Earle, July 9, 1935. (13 P. S. 74-75).

1933 Act 3 PL 5 The returns required by law to be made by constables to the court of quarter sessions (now common pleas) may in the discretion of the court be abolished or be made at such times and relating to such subjects as the court may require. No constable shall hereafter be entitled to any fees or mileage for making such returns, except such as are required by the court. Gov. Pinchot, February 28, 1933.

Repealed Act 49-2009, Section 4 (2) (xxvii)
now 44 Pa. C. S. 7162 (Returns), formerly 13 P. S. 73.

1931 Act 331 PL 1206 First Class Twp Code Gov. Pinchot, June 24, 1931. – see now 1949 Act 569 PL 1955, May 27, 1949.

 **1931 Act 263 PL 751 Vehicle Code – Section 1203.** peace officers, which includes all constables and police, may stop violators of the Vehicle Code on view, only when in uniform and displaying a badge or other sign of authority. Gov. Pinchot, June 22, 1931.

1931 Act 156 PL 492 an act relating to trespassing livestock. constables duties...fees of the constable...\$ 1.00 for each animal impounded, \$ 2.00 for each animal sold, provided, however, that in no case shall the fees of the constable for impounding and selling amount to more than \$ 4.00... Gov. Pinchot, June 10, 1931.

repealed Act 49-2009, Section 4 (2) (xxvi)

now 44 Pa. C. S. 7159 (Trespassing livestock) and 7159.1 (Sale of trespassing livestock)


1929 Act 483 PL 1581 Section 14. added... malfeasance or misfeasance in office committed by him, including any act or acts of oppression of any suitor or suitors, or witness or witnesses...habits of intemperance or neglect of duty... as additional grounds for removal of any constable from office by the courts of quarter sessions and to appoint a suitable person to fill the vacancy... Gov. Fisher, May 7, 1929.

now 44 Pa. C. S. 7172 (Incompetence), formerly 13 P. S. 31.

1929 Act 459 PL 1535 Section 355. Upon the petition of 25 taxpayers of any township, or of two or more adjacent townships, to the court of quarter sessions, representing that the safety of the citizens and the security of property requires the appointment of one or more deputy constables to act as policemen...Such appointments may be made by the court for one township, or the same deputy


constables may be appointed to act for two or more adjacent townships. Section 356. Such deputy constables shall possess and exercise all the powers of policemen of cities of the first class, in the several townships for which they are appointed. Keepers of jails...shall receive all persons arrested by such policemen for any offense against the laws of this Commonwealth... Gov. Fisher, May 2, 1929.


 **1929 Act 404 PL 1005 Vehicle Code 'Peace Officer'** Section 703. Arrest on View or With Warrant Gov. Fisher, May 1, 1929.

 **1929 Act 403 PL 905 Vehicle Code 'Peace Officer'** – A sheriff, deputy sheriff, constable, member of PSP, state highway patrolman, or other police officer, vested with authority of arrest. Section 1203. Arrest on View or With Warrant. Gov. Fisher, May 1, 1929.

1929 Act 189 PL 471 Section 358. The deputy constables (appointed to act as policemen in townships and in townships which are adjacent) shall be paid such compensation out of the township funds, and such provisions therefrom made for the purchase of their uniforms, equipment, and means of conveyance and maintenance of the same, as may be approved by the court of quarter sessions. They may be discharged whenever the court appointing them is satisfied that their services are no longer required. Gov. Fisher, April 10, 1929.

1929 Act 32 PL 32 upon a vacancy (failure to elect, failure to qualify, incompetency, death, resignation, removal, or any other cause) in the office of constable, the court of quarter sessions, upon petition of not less than ten voters, to appoint a suitable person ...shall serve as constable thereof for the unexpired term so vacant. Gov. Fisher, March 20, 1929.
Repealed Act 49-2009, Section 4 (2) (xxv),
now 44 Pa. C. S. 7121 (Constables), formerly 13 P. S. 11.


 **1927 Act 461 PL 968** Section 8. Any state police officer, county detective of the county or constable of the township, wherein a public dance hall, ballroom or academy is situated, shall have the power to cause the place, hall or room where any public dance or ball is given to be vacated, whenever any provision of any law or ordinance with regard to public dances and public balls is being violated, or whenever any indecent act shall be committed, or when any disorder of a gross or vulgar character shall take place therein. Gov. Fisher, May 11, 1927.
current statute 53 P. S. 54258

 **1927 Act 452 PL 886 Vehicle Code** Section 1206. Arrest on View – Police officers, sheriffs, deputy sheriffs and constables of the cities, boroughs, incorporated towns, townships, and counties of the Commonwealth, members of PSP, and designated officers of the department, may arrest, when in uniform and displaying a badge or other sign of authority, upon view, any person violating any of the provisions of this act; and such officers shall forthwith make and file with ... Gov. Fisher, May 11, 1927.

1927 Act 336 PL Borough Code Section 1031-1034 High Constable ...shall have the power and authority of constables of the several townships in the county... shall give ten days notice of the biennial elections of the borough, by posting six advertisements in the most public places within the same... if a high constable is also employed as a police officer he shall accept no fee other than his salary as a policeman, except public rewards and the legal mileage allowed to constables for traveling expenses. Gov. Fisher, May 4, 1927.


1927 Act 291 PL 450 The superintendent of the Pennsylvania State Police may appoint and remove the chief of the fire department...or, where no such fire department exists, the burgess or constable of any borough or town, or constable or the president or chairman of the board of supervisors of any townships, as assistants to the department... assistants shall inquire into the origin, cause, and other circumstances of every fire by which any property or life has been destroyed, damaged, or endangered... Gov. Fisher, April 27, 1927.
see also Opinions of the Attorney General – Official Opinion # 36, December 2, 1957.
amended PL 2403 June 29, 1937; PL 123 Apr 28, 1943

current statute 35 P. S. 1181 Commissioner of state police to appoint assistants (no mention of constables)

 **1927 Act 275 PL 421 Section 26.** The operator of any motor vehicle shall stop upon request or signal of any constable, police officer, or member of the State Police Force...No such constable, police officer, or member of the State Police Force, or other person shall request or signal the operator of a motor vehicle to stop, for the purpose of selling tickets for charitable or other purposes, or for any form of solicitation whatever. Gov. Fisher, April 27, 1927.

1927 Act 240 PL 374 ...in cities of the third class...Section 6. ...No policeman of any such city shall, after his appointment and qualification, hold at the same time the office of constable. Gov. Fisher, April 23, 1927.


1925 Act 113 PL 155 Constables shall receive the same fees for serving writs in juvenile cases as they receive for similar services in criminal cases. Gov. Pinchot, April 6, 1925.
Repealed Act 49-2009, Section 4 (2) (xxiv)
now 44 Pa. C. S. 7161.1 (c) (Specific fees), formerly 13 P. S. 67.

 **1923 Act PL 718 Section 26** ... Any constable or police officer or member of the State Police Force or designated officer of the State Highway Department, who shall be in uniform or shall exhibit his badge or other sign of authority, shall have the right to stop any motor vehicle, upon request or signal, for the purpose of inspecting the said motor vehicle as to its equipment or operation, or manufacture's number or motor number or weight, and securing such other information as may be necessary. Gov. Pinchot, June 14, 1923. see also Opinions of the Attorney General – May 23, 1925.

1923 Act 348 PL 903 Section 14. The proper court of the county wherein the land is actually situated shall appoint the necessary deputy constables to act with the election boards, and fill vacancies in the election boards. Gov. Pinchot, June 28, 1923.
Repealed Act 49-2009. Section 4 (2) (xxiii)

1923 Act 216 PL 340 Section 11. Constables...shall be allowed and be paid out of the county treasury \$ 2.00 for each polling place, for advertising ward, township, district, and borough elections, but not more than \$ 15.00 for this purpose for any one election; and \$ 0.06 per mile for each mile necessarily traveled in the performance of said duties. Constables shall be allowed and paid...\$ 0.20 for delivering to each township officer a certificate of his election... Gov. Pinchot, May 23, 1923.

1923 Act 58 PL 83 ...constable and supervisors of townships duties regarding notifying owners of land where Canada thistle are growing. Added duty to notify owners if the weed commonly known as chicory or succory or blue daisy and marihuana are growing. Gov. Pinchot, April 23, 1923.
prior statute 1885 Act 11 PL 9 April 24, 1885
current statute 3 P. S. 243 Supervisors to destroy on public roads; notice to owners of unseated lands

 **1919 Act 283 PL 678** Vehicle Code Section 31. Constables and Police Officers – Constables and police officers of the State, and of the cities, boroughs, incorporated towns, townships, and counties of this Commonwealth, may arrest, upon view, any person or persons violating any provisions of this act, and such officers shall forthwith make and file with the mayor, burgess, magistrate, alderman, or justice of the peace, before whom such person arrested is taken, an affidavit setting forth in detail the offenses complained of, and at once furnish a copy thereof to the person arrested. Gov. Sproul, June 30, 1919.

1919 Act 260 PL 535 regarding civil actions in the county court of Allegheny County... Section 7. (e) Service of the writs of summons and replevin...and execution of warrants of arrest, or other processes in desertion and nonsupport cases, shall be made in the same manner as is now provided by law...and may be made by the sheriff of the county, by a constable of the county, or by such persons as may be appointed by the court for that purpose, as shall be determined by the court. Gov. Sproul, June 20, 1919.

1919 Act 225 PL 451 ...from one hour after sunset until one hour before sunrise...vehicles required to have at least one white headlight...no vehicle shall pass a street passenger car that has stopped for the purpose of taking on or discharging passengers... Section 5. Constables and police officers of the cities, boroughs, incorporated towns, townships and counties and members of the State Police Force may arrest upon view and without warrant, any person violating any provisions of this act. Gov. Sproul, June 12, 1919.

1919 Act 171 PL 357 constables required to make returns to the court of quarter sessions (now common pleas) in counties of the 6th, 7th, & 8th class. when complaints are made to the court of quarter sessions ... the court may summon the constable... and direct him to investigate such violations or conditions and make a report of his investigation. No compensation for making a return shall be paid to any constable unless the constable actually appeared in court, and presented his return containing information required by the court...Whenever any complaint is made to the court of quarter sessions of violations of law or of conditions which under the law the constable of the district is required to report to the court, the court may summon the constable of the district to appear before it, and direct him to investigate such violations and conditions, and make a report of his investigations. Gov. Sproul, May 31, 1919.

Repealed Act 49-2009, Section 4 (2) (xxii).

now 44 Pa. C. S. 7157 (Returns and appearance), formerly 13 P. S. 43, formerly 13 P. S. 44.

now 44 Pa. C. S. 7166 (Returns to court), formerly 13 P. S. 72.

1919 Act 145 PL 274 Constable Fees in elections For attending general, special, township, ward, or borough elections, five dollars,...Provided, That where any such election be held in any township, ward, or borough in which there are more than one election districts or precincts, and a deputy constable is appointed to attend an election held at such districts or precincts, said deputy constable shall each receive the sum of five dollars. Gov. Sproul, May 23, 1919.

1917 Act 401 PL 1158 Constable Fees Gov. Brumbaugh, July 20, 1917.

Repealed Act 44-1994

1917 Act 354 PL 1071 ...the fees of constables...for such monthly visits (to places where liquors are sold or kept) made by a constable shall be \$ 0.25 for each place visited in his jurisdiction, and \$ 0.06 for each and every mile actually traveled in making such visits...shall be verified by oath by the constable and filed with the commissioners of the respective counties. Gov. Brumbaugh, July 18, 1917.

1917 Act 317 PL 818 **Section 3** ...under the term 'police officer' is included the chief of police or his agents of any city, the high constable of any borough, or the constable of any borough not having a high constable, the constable of any incorporated town or township, game, fish and forest wardens. ... Section 18 it shall be the duty of every police officer to seize and detain any dog or dogs...found running at large and unaccompanied by its owner or keeper... Gov. Brumbaugh, July 11, 1917.

see also Opinions of the Attorney General – Opinion # 6, February 19, 1918.

current statute 3 P.S. 459-102 'Dog Law' Definitions.

'Police Officer' ...the term includes constables and dog, game, fish and forest wardens.

Act 225-1982 (December 7, 1982) definition of 'police officer' used the term ' State constabulary'

1915 Act 192 PL 312 General Borough Act Chapter VII Article III High Constable Section 1...shall take and subscribe an oath...shall give such bond with surety as is required by the borough. Section 2. shall have the power and authority of constables of the several townships in the county. Section 3. shall give 10 days notice of the biennial elections of the borough by posting 6 advertisements in the most public places within the same. Section 4. It shall be unlawful for any high constable who is at the same time employed as a policeman in the borough, or any other part of the Commonwealth to charge or accept any compensation, in addition to the salary paid him as a policeman, for any services rendered, either as a policeman or as high constable, except public rewards and the legal mileage allowed to constables for traveling expenses. Section 5. any violations ... to pay a fine not exceeding \$ 50 and costs...

Chapter VII Article VI Appointed Officers (f) Police Section 17. The borough police shall receive a stated salary to be fixed by ordinance; and it shall be unlawful for any borough policemen to charge or accept any fee or other compensation, in addition to his salary, for any service performed pertaining to his duties or office, except public rewards and legal mileage allowed for traveling expenses. Section 18. any violations... to pay a fine not exceeding \$ 50 and costs...Section 19. Borough policemen, residing in the borough, may at the same time hold and exercise the office of constable in the borough or any ward thereof, and may demand and receive all costs, fees and emoluments pertaining to such office. Section 20. Borough policemen may perform all the duties of high constable but shall receive no compensation therefor.

Gov. Brumbaugh, May 14, 1915.

1915 Act 43 PL 76 Section 1 ... It shall be the duty of the sheriff, coroner, constable, police, or other official making the arrest, ...to issue, without costs to the applicant, a certificate stating the name...the charge upon which he, she or they have been arrested...the amount of bail demanded...fail, omit, neglect, or refuse to issue a certificate...fine of not more than \$ 500... Gov. Brumbaugh, April 9, 1915. see also Opinions of the Attorney General - October 1, 1915.

1913 Act 342 PL 534 That on and after the passage of this act, the sole power to appoint a deputy constable, or constables, in any ward, borough, or township, shall be vested in the constable of said ward, borough, or township, subject to approval of the court of quarter sessions as provided by law; and that no person shall be appointed as a deputy constable unless he shall be, at the time of his appointment, a bona fide resident of the ward, borough, or township for which he shall have been appointed, and shall continue to be a bona fide resident for the time during which such appointment is made. Gov. Tener, June 19, 1913.

Repealed Act 49-2009, Section 4 (2) (xxi)

now 44 Pa. C. S. 7122. (Deputy constables), formerly 13 P. S. 21

1913 Act 308 PL 462 That any policeman or constable...is hereby authorized to destroy, or cause to be destroyed, any animal or animals in his charge, ...such animal or animals appears to be injured, disabled, diseased past recovery, or unfit for any useful purpose. Gov. Tener, June 7, 1913.

current statute 3 P. S. 325 (Authority to destroy), 3 P. S. 326 (Inquiry as to condition of animal).

1913 Act 170 PL 246 it shall be unlawful for any person...being in possession of goods and chattels belonging to another, either as storage or warehouseman, pawnbroker, second hand dealer, or junk dealer to conceal from any constable or sheriff entrusted with the execution of any writ...Gov. Tener, May 20, 1913.

1913 Act 140 PL 203 The fees of constables of townships, boroughs, and cities of the 3rd class, for such monthly visits made by a constable, shall be 25 cents for each place visited in his jurisdiction and six cents per mile for each and every mile actually traveled in making such visits...(for visiting places where liquor was sold) Gov. Tener, May 14, 1913 (formerly 13 P. S. 68-69).

1911 Act 299 PL 727 An act authorizing the election in first class townships of an additional constable to serve for a term of four years. Gov. Tener, June 9, 1911.

Repealed Act 49-2009, Section 4 (2) (xx).

now 44 Pa. C. S. 7114 (a) (2). (Townships), formerly 13 P. S. 3.

1909 Act 287 PL 514 Repeals Act ? March 31, 1895 (making constables ex-officio fire wardens) Gov. Stuart, May 11, 1909.

1909 Act 187 PL 290 Repeals Act 7 PL 9 March 30, 1897 (making constables ex-officio fire wardens) Gov. Stuart, April 29, 1909.

1909 Act 104 PL 151 fixing specific constable fees: for attendance on court and making returns thereto, \$ 2.50 per diem. for serving notice of their election upon township or borough officers, for each service, 15 cents. Gov. Stuart, April 23, 1909.

Repealed Act 49-2009, Section 4 (2) (xix).
now 44 Pa. C. S. 7161.1 (Specific fees), formerly 13 P. S. 64.

1909 Act 92 PL 141 That sheriffs, constables, members of the state constabulary, or other persons authorized by the laws of this Commonwealth to make arrests, hereafter shall have the use, for a period not to exceed 48 hours, of borough and township lockups and city or county prisons, for the detention of prisoners until they can be disposed of according to law.. Gov. Stuart, April 23, 1909.
see also Opinions of the Attorney General – Official Opinion # 121, 1958.
current statute 61 Pa. C. S. 1154 (Law enforcement use of county correctional institutions).

1907 Act 314 PL 465 ...no constable of any city of the first class shall appoint any person as a deputy who is not a bona fide resident and duly qualified elector of the ward of the city in and for which constable was elected. That upon the removal of said deputy from said ward, or ceasing to be a qualified elector of said ward, in and for which said constable was elected, upon the petition of five duly qualified electors thereof, setting forth said facts, and upon thereof, the court of quarter sessions may revoke the appointment of said deputy. Gov. Stuart, June 8, 1907.

1907 Act 298 PL 438 ...For services performed by a constable in delivering a child under the age of 16 years to the juvenile court, 75 cents together with 3 cents for each mile actually traveled and necessary... Gov. Stuart, June 7, 1907.

1905 Act 227 PL 361 creating the department of the state police section 5. ...authorized and empowered to make arrests, without warrant, for all violations of the law which they may witness, and to serve and execute warrants issued by the proper local authorities. They are also authorized and empowered to act as forest, fire, game and fish wardens; and, in general, to have the powers and prerogatives conferred by law upon members of the police force of cities of the first class, or upon constables of this Commonwealth... Gov. Pennypacker, May 2, 1905.

1905 Act 214 PL 309 ... it shall be lawful for any policemen residing in any borough, who shall be duly elected or appointed to the office of constable in said borough, or any ward thereof, to hold and exercise said office, and to demand and receive all costs, fees and emoluments pertaining thereto, as allowed by law.. Gov. Pennypacker, April 25, 1905.

Repealed Act 49-2009, Section 4 (2) (xviii)
now 44 Pa. C. S. 7132 (Police officers), formerly 13 P. S. 10.

1903 Act 202 PL 268 Whereas, it is of the utmost importance to the rights of the people of this Commonwealth that the public highways of cities, boroughs, counties and townships of this Commonwealth should be as free as practicable from the reckless use of dangerous motor vehicles...Section 9. Every person so licensed shall carry with him, when using or operating such motor vehicle upon the public highways, and when so requested by any constable or police officer of the Commonwealth shall produce the same and the certificate of registration for inspection. Section 10. It shall be the duty of the constables and police officers of the cities, boroughs, and townships of this Commonwealth to arrest, upon view and without a warrant, any person violating any provisions of this act... Gov. Pennypacker, April 23, 1903.

1903 Act 44 PL 37 ...That the Commissions of the Valley Forge park...shall also have power to deputize persons as special constables to maintain order within said park, protect the property from destruction, and make arrests for riots or illegal trespasses.. Gov. Pennypacker, March 19, 1903.

1903 Act 29 PL 24 ... persons employed as officers by the Commissioner of Forestry... be vested with the same powers as are by existing laws conferred upon constables and other peace officers: to arrest on view, without first procuring a warrant therefor, persons detected by them in the act of trespassing upon any forest or timber land within this Commonwealth, under such circumstances as to warrant the reasonable suspicion that such persons have committed, are committing, or are about to commit, some offense against any of the laws now enacted or hereafter to be enacted for the protection of forest and timber lands... Gov. Pennypacker, March 11, 1903.



1903 Act 26 PL 22 That whenever a vacancy may occur in the office of high constable... or in the office of constable in any borough, ward of any borough, or township in said Commonwealth, by incompetency, death, resignation, removal, or for any other cause, it shall be the duty of the court of quarter sessions to appoint a suitable person who ... shall serve as the high constable or the constable thereof, as the case may require, for the unexpired term, so vacant. Gov. Pennypacker, March 11, 1903.

Repealed 1915 PL 312 May 14, 1915.

1901 Act 327 PL 643 Renovated butter law. Section 11. It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violations of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agent, or attorney, or by any citizen of this Commonwealth, to make report to the court of quarter sessions of the proper county, as part of his quarterly report and return to said court... Gov. Stone, July 10, 1901

Repealed 1978 Act 53 PL 202 April 28, 1978.

Repealed 1994 Act 70 PL 421 July 7, 1994.

1901 Act 208 PL 327 Oleomargarine law. Section 10. It shall be the duty of every constable in any city, borough, ward or township of this Commonwealth, having knowledge of any violation of this act, or whenever requested so to do by the Dairy and Food Commissioner, his agent, or attorney, or by any citizen of this Commonwealth, to make report to the court of quarter sessions of the proper county, as part of his quarterly report and return to said court... Gov. Stone, May 29, 1901.

1901 Act 98 PL 131 ...the fees to be charged and received by constables for executing an order of relief of a pauper or paupers shall be seventy-five cents; and for each mile...six cents... Gov. Stone, May 2, 1901.

Repealed Act 61-1998, Gov. Ridge, May 15, 1998.

1899 Act 118 PL 184 dealing with a mercantile license tax on vendors... Section 10. ... it shall be the duty of the constable of his respective ward, district or township to compare the list (of vendors, dealers, and businesses) and report to the county or city treasurer all omissions found, and for such service the constable shall receive a fee or 50 cents for each and every omission so reported. Gov. Stone, May 2, 1899.

1899 Act 14 PL 17 That the constables of the various wards, boroughs and townships shall be ex-officio fire, game, and fish wardens. Section 2. It shall be the duty of said fire, game and fish wardens to enforce all statutes of this State now in force, or that may hereafter be enacted, for the protection of forests and timber lands from fire, and for the protection and propagation of game, game birds, game mammals, song and insectivorous birds, and fish, and said constables or wardens shall have authority to arrest without warrant any persons caught by them violating any of the aforesaid laws...Such arrests may also be made on Sunday...Section 3. Said constables or wardens shall have power without warrant to search and examine any boat, conveyance, vehicle, fish box, fish basket, game bag or game coat...shall at any time seize and take possession of any and all birds, animals or fish... Section 4. Any constable or warden, upon arrest and prosecution of any offender to conviction... shall, in addition to the fees to which he may be entitled under existing laws, be paid for his services the sum of ten dollars... Section 5. Each of said constables or wardens shall, for the purposes of this act, have concurrent jurisdiction throughout his own proper county... Gov. Stone, March 22, 1899.

see also Opinions of the Attorney General – 1919-1920

see also Opinions of the Attorney General – Opinion # 6, June 8, 1915.


1899 Act 1 PL 3 constable fee bill Gov. Stone, February 17, 1899. (formerly 13 P. S. 70-71)

1897 Act 209 PL 266 Section 2 and 3. ...it shall not be lawful for any high, ward, township or other constable, who is at the same time employed as a policemen in any city, borough or other part of this Commonwealth to charge or accept any fee or other compensation, in addition to the salary paid to him as a policeman, for any service rendered or performed by him pertaining to his office and duties, either as


a policeman or as such high, ward or other constable, except public rewards and the legal mileage allowed to constables for traveling expenses. Gov. Hastings, July 14, 1897.
Repealed Act 49-2009, Section 4 (2) (xvi) and (xvii) as to constables
now 44 Pa. C. S. 7132 (a) (Police officers)

1897 Act 115 PL 139 The suits against sureties in constables bond shall not be sustained, unless the same be instituted within five years after the date of such bond or obligation. Gov. Hastings, June 10, 1897.

Repealed Act 53 PL 202, April 28, 1978. formerly 13 P. S. 81.
now 42 Pa. C. S. 5525 (statute of limitations: 4 years on an action upon an official bond of a public official, officer or employee)

 **1897 Act 101 PL 121** That the policeman and constables of the several boroughs of this Commonwealth, in addition to the powers confirmed upon them, shall and may, without warrant and upon view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinances of said borough, for the violation of which a fine or penalty is imposed. ... When any person is arrested on view, a complaint, on oath or affirmation, shall be immediately made.... Gov. Hastings, June 4, 1897.
Repealed Act 49-2009, Section 4 (2) (xv).

now Act 44 Pa. C. S. 7158. (Arrest in boroughs), formerly 13 P. S. 45, formerly 13 P. S. 46.

 **1897 Act 25 PL 29** To authorize constables and other peace officers, without first procuring a warrant, to arrest persons reasonably suspected by them of offending against the laws protecting timber lands. That if any person or persons shall be detected by any constable or other peace officer, in the act of trespassing upon any forest or timber land within this Commonwealth, under any circumstances as to warrant the reasonable suspicion that such person or persons have committed, are committing, or are about to commit, some offense or offenses against any law enacted or hereafter to be enacted for the protection of forest and timber land, such constable or other peace officer shall have authority at once, without first procuring a warrant therefor, to arrest on view such person or persons, with like effect as though such warrant had first been procured. Gov. Hastings, April 29, 1897.

Repealed Act 49-2009, Section 4 (2) (xiv)
now 44 Pa.C.S. 7155. (Arrest of offenders against forest laws)

1897 Act 7 PL 9 Making constables of townships ex-officio fire wardens for the extinction of forest fires...The constables of the various townships of the Commonwealth shall be ex-officio fire wardens, whose duty it shall be, when fire is discovered in the forests within their respective townships, immediately to take such measures as are necessary for its extinction...the said fire wardens to receive fifteen cents per hour...one half out of the treasury of the respective county and the remaining half of said expense shall be paid by the State Treasurer...such fire warden or constable deemed guilty of willfully or negligently making a false report, or neglect of duty, and the court shall suspend him from office and direct the district attorney to indict and try him, and if found guilty, he shall be fined in a sum not exceeding fifty dollars, and undergo an imprisonment not exceeding three months, both or either, at the discretion of the court... Gov. Hastings, March 30, 1897.

see also Opinions of the Attorney General – May 17, 1900.
amended Act 65 PL 89 Gov. Pennypacker, March 31, 1905.

1895 Act 2 PL 375 one constable to be elected in each ward or district of a borough or township. Gov. Hastings, June 26, 1895. formerly 13 P. S. 2.

1895 Act 248 PL 333 That it shall be lawful..., with the approval of the court of quarter sessions of the proper county, to employ a night watchman or night watchmen for the purpose of protecting their premises and property in the night time, and all persons so appointed, with the approval aforesaid, as night watchman shall have, exercise and enjoy all rights, powers and privileges now vested by law in constables or police officers duly elected or appointed in said cities or boroughs... Gov. Hastings, June 26, 1895.

1893 Act 318 PL 419 Section 28 It shall be the duty of the police officers, constables and deputy constables now required by law to be present at the polls to remain within the voting room, but outside the guard-rail, while the votes are being counted, and to preserve order therein. No person except the said peace officers, when necessary for the preservation of the peace, or persons acting by their authority for the same end, shall enter the space within the guard-rail... Gov. Pattison, June 10, 1893

1893 Act 71 PL 117 constable fees ... for arresting a vagrant, disorderly person, or other offender against the laws (without process), and bringing before a justice, seventy-five cents... Gov. Pattison, May 23, 1893.

1889 Act 175 PL 156 That upon the petition of not less than 25 taxpayers of any township...to the court of quarter sessions representing that the safety of the citizens and the security of property makes, in their opinion, necessary, the appointment of one or more deputy constables, to act as policeman...shall severally possess and exercise all powers of policemen of cities...such deputy constables shall, when on duty, severally wear a shield or badge with the words "township police" and the name of the township which appointed inscribed thereon. That said deputy constable shall be paid such compensation as may be approved by the court of quarter sessions, and may be discharge whenever the court appointing them shall be satisfied that their services are no longer needed. Gov. Beaver, May 9, 1889.

1889 Act 79 PL 83 That the qualified voters of each ward in cities of the second and third class shall...elect a properly qualified person for constable in each of said wards, who shall serve for three years. Whenever a constable shall be appointed by the court, as provided by existing laws, the constable so appointed shall serve for the unexpired term. Gov. Beaver, May 4, 1889.
Repealed Act 49-2009, Section 4 (2) (xiii).

now 44 Pa. C. S. 7112 (Cities of the second and third classes), formerly 13 P. S. 1.

1889 Act 5 PL 6 That the qualified voters of every borough and township, and when a borough is divided into wards, of every ward shall...vote for and elect a properly qualified person for constable, in each of said districts, who shall serve for three years. Gov. Beaver, February 14, 1889.
Repealed Act 49-2008, Section 4 (2) (xii). Repealed as to high constables PL 312, May 14, 1915
now 44 Pa. C. S. 7113 (a) and 7114 (a), formerly 13 P. S. 2.

1889 Act 1 PL 3 That whenever any new ward is erected in any city of the first class...the ward is entitled to, according to the list of taxable inhabitants, such a number of constables as directed by law... Gov. Beaver, February 12, 1889.
Repealed Act 49-2009, Section 4 (2) (xi)

1885 Act 11 PL 9 To provide for the destruction and prevent the spread of Canada thistle – ... to inform by written notice any constable or supervisor of the township or district, of the existence of where Canada thistles may be growing,... give notice to cut and destroy such thistles or weeds...the officer serving such notice shall likewise be entitled to a fee of fifty cents, together with six cents mileage for each mile, circular, necessarily traveled...whenever it shall come to the knowledge of either the supervisor or constable of the existence of any Canada thistle or weeds thereon, it shall be his duty to notify the owners...if any such constable or supervisor shall neglect or refuse to perform his duties as prescribed by this act, he shall be liable to a fine of ten dollars... Gov. Pattison, April 24, 1885.

1883 Act 13 PL 14 ...any agricultural or horticultural society of this state...is hereby authorized to appoint...policeman, as shall be necessary for their exhibitions, whose duty it shall be to preserve order within and around the grounds...said policeman shall have the same power the time said exhibition shall continue, that a constable may have by law, in serving criminal process and making arrests, and in addition, may arrest any person for the commission of any offense, mentioned in section two. Gov. Pattison, April 26, 1883.

current statute 3 P. S. 1. (Policemen to protect; powers)

1879 Act 196 PL 164 constable fees in civil actions (contracts, trespass, trover, conversation wherein the sum demanded does not exceed \$ 300) on all sales made final, be as follows: for all sales amounting to less than \$ 50, three percent; for all sales amounting to less than \$ 100, two percent; for all sales above \$ 100, one percent. Gov. Hoyt, July 7, 1879

1879 Act 117 PL 125 in matters dealing with cruelty to children and employment of children... Section 6. ...such justice or magistrate shall forthwith issue a warrant to a constable or other authorized officer, to enter such place or house and investigate the same; and such person may arrest or cause to be arrested all offenders, and bring them before any justice, magistrate or court of record for a hearing of the case; and it shall be the duty of all constables and policemen to aid in bring all such offender before said authorities for a hearing. Section 8. ...humane society may offer similarly qualified persons to the court of common pleas of the county, whereupon such court or any judge thereof shall, if they be fit persons, commission such person to act as constables, with power to arrest all offenders against this act or any provisions thereof...all persons thus qualified under this section, shall be deemed to be constables and authorized persons within the meaning of section 6 of this act; and the keepers of jails or lock ups, or station houses, in any of said counties, are required to receive all persons arrested by such policemen or constable. Gov. Hoyt, June 11, 1879.

1879 Act 54 PL 56 ...the fees received by constables for every act in or about the arrest or commitment of vagrants, shall be twenty-five cents for each vagrant so arrested and committed, and mileage as is now allowed by law for the same service. Gov. Hoyt, May 19, 1879.

1878 Act 159 PL 125 regarding persons traveling in or upon railroad engines or cars who ride without paying the fare, or of committing larceny, violence or destruction of property, or threatening, intimidating or assaulting travelers or other persons... Section 2. Any constable or police officer, having knowledge or being notified of any violation of this act, shall forthwith arrest such offender and take him before any magistrate, alderman or justice of the peace or...issue a warrant or a capias for the arrest of any such offender... Gov. Hartranft, May 24, 1878.
amended Act 128 PL 135, Gov. Hoyt, June 11, 1879. (unchanged as to constable duties)
current statute 18 Pa.C.S. 6161

1878 Act 109 PL 85 Section 4. It shall be the duty of the constable of each township to make return to the court of quarter sessions of the proper county of defects in turnpike or plank roads, in the same manner and to the same extent that they now make returns in defects in public roads... Gov. Hartranft, May 22, 1878.

1878 Act 56 PL 40 To define and suppress vagrancy. ...the fee for a constable or policeman making an arrest under this act is the sum of fifty cents each, and mileage as now provided by law when such arrest is made more than one mile from the prison or place where such vagrant shall be committed, and no mileage shall be allowed to any officer making an arrest within one mile of the prison...any willful refusal to make such arrest on the part of any constable or police officer, shall subject him to a penalty of five dollars... Gov. Hartranft, May 3, 1878.

1877 Act 8 PL 12 Section 2. It shall be the duty of the constable of the proper ward, district, borough or township to give at least twenty days notice, by advertisement ... of the expiration of the term of the commission of any alderman or justice of the peace that may expire... and also of any vacancy that may happen by death, resignation or otherwise. Gov. Hartranft, March 22, 1877.

see also Opinion of the Attorney General – 1907-1908

1876 Act 148 PL 179 No person hereafter elected shall be capable of holding the office of school director, constable, path-master or commissioner of roads, and that of township or borough auditor. Gov. Hartranft, May 18, 1876.

current statute 24 P. S. 3-322 (Eligibility, incompatible offices)

1876 Act 126 PL 154 To define and suppress vagrancy. Section 2. If any person shall be found offending in any township or place against this act it shall and may be lawful for any constable or police

officer of such township or place, and he is hereby enjoined and required, on notice thereof given him by any inhabitants thereof, or without such notice on his own view, to apprehend and convey or cause to be conveyed such person to a justice of the peace or other committing magistrate... Section 7. That for each arrest, hearing or commitment made under this act there shall be paid out of the county treasury...the same fees and mileage as now provided by law for like services in other cases of arrest, hearing, and commitment...any willful refusal to make such arrest on the part of the constable or police officer shall subject him to a penalty of ten dollars... Gov. Hartranft, May 8, 1876.

1876 Act 67 PL 99 Section 1. That any police officer or constable, upon view of the breach of any ordinance of any city of the first class, is authorized to forthwith arrest the person or persons so offending, without any process, and to take such person or persons forthwith before any police magistrate or alderman of said city...

Gov. Hartranft, May 3, 1876.

Repealed Act 49-2009, Section 4 (2) (x) (as to constables).

current statute 53 P. S. 13349 (Summary proceedings for violation of ordinances)

1876 Act 58 PL 39 That an act to consolidate the offices of assessor and constable in the township of Brecknock, in the county of Lancaster, and Easttown and South Coventry townships, Chester County...is hereby repealed so far as the said act relates to Brecknock township, in the county of Lancaster. Gov. Hartranft, 1876.

1872 Act 881 PL 920 burgesses, justices of the peace and constables in the county of Dauphin, shall be entitled to the same fees now allowed to alderman and constables in the city of Harrisburg. Gov. Geary, April 4, 1872.

1872 Act 725 PL 772 That the fees to be charged by constables of the city of Philadelphia, to be charged for the following services shall be: For watchmen, to be charged to the defendant on execution or distress for rent, per day three dollars. For collection of rent by distress or otherwise, to be charged to the landlord, apart from the commissions allowed by law, shall be five percent, on the amount actually collected. For levying goods, and selling the same on execution, for each dollar five cents. For each adjournment of sale, under execution or distress for rent, one dollar and costs for advertising said adjourned sale. Gov. Geary, April 3, 1872.

1866 Act 164 PL 190 ...as far as relates to the making of returns, at each term of the court, in the county of Chester; but constables are hereby required to make return, to the proper court of said county (Chester), in all cases of such violation or disturbance, when known to them, or when required to do so by any person, or persons, having knowledge of such illegal sales (of spirituous or intoxicating liquors), or of such disturbance, at any election, aforesaid. Constables elect, who appear at the next court of quarter sessions of said (Chester) county, after their election, to accept or refuse, the office, shall receive the same pay and mileage as is allowed for making the return aforesaid. Gov. Curtin, March 12, 1866.

1866 Act 154 PL 182 Section 1. That it shall be the duty of the constables of the several cities, boroughs, wards and townships, in the counties of Erie, Luzerne, Susquehanna, Pike and Crawford, to make diligent search for all persons, who shall, either directly, or indirectly, be engaged in the sale, and traffic, of liquors, wines, or other strong drinks, and make quarterly returns, thereof, under oath, to the courts of quarter sessions of the proper counties; and it shall be the duty of the courts to make diligent inquiries, of the constables, of the manner and fidelity with which they have attended to, and discharged, the requirements, hereby enjoined, upon them; and should the courts be satisfied of the unfaithfulness of any constable, in this respect, they are hereby authorized, and empowered, to suspend, or remove, him from office, and appoint another one in his place.

Section 2. It shall be the duty of the constables, and of the several police constables, officers, or detectives, appointed by the proper authorities, in the counties aforesaid (Erie, Crawford, Luzerne, Susquehanna and Pike), and they are hereby authorized, and required, to arrest any professional thief, pick-pocket, or burglar, who may be found at any steam-boat landing, railroad depot, church, banking institution, broker's office, place of public amusement, auction room, or common thoroughfare, in the city of Erie, Cory, Meadville, or Titusville, and carry them, forthwith...

Section 3. That the conductors, on the several railroads, while passing through either of the counties, aforesaid, shall have power to arrest anyone who may be found stealing, or picking the pockets of passengers, or others, or committing any breach of the peace, on the cars, and detain him, or her, til reaching any one of the places, Erie, Cory, Meadville, or Titusville, and then deliver him, or her, to a constable, or other police authority.... Gov. Curtin, March 12, 1866.

1864 Act 782 PL 886 That the high constable of the borough of Dauphin, in the county of Dauphin, is hereby empowered and required to perform all the duties enjoined upon constables, and shall receive the same fees for such services as are now, by law, allowed to constables. Gov. Curtin, May 7, 1864.

1864 Act 60 PL 60 relative to the term of time for which constables are elected in the city of Philadelphia...in lieu of the term of years for which constables of the various wards, boroughs and townships of the said city are now elected, they shall hereafter be elected for the term of five years, from and after the expiration of the various terms, to which they have been elected. Gov. Curtin, March 18, 1864.

1862 Act 64 PL 56 for collecting taxes in Greene Co for the relief of families of the volunteers of the commonwealth (civil war soldiers) Section 3. That before the court of quarter sessions of said county (Greene) shall appoint or qualify constables, they shall be required to give bond in the name of the commonwealth, in such sum and with such sureties as shall be approved by the said court, conditional for the payment to the proper county treasurer of the full amount of relief tax contained in any warrant and schedule which shall be delivered to them, after deducting exonerations, within four months from and after delivery of any such warrant or schedule aforesaid. Gov. Curtin, February 27, 1862.

1858 Act 221 PL 185 That the qualified voters of the city of Philadelphia shall elect, in each ward, as many constables as they have alderman... and whenever they shall increase the number of alderman, the number of constables shall also be increased: Provided that this act shall not apply to the 21st, 22nd, 23rd, and 24th wards of said city. Gov. Packer, March 30, 1858.

1857 Act 197 PL 170 That hereafter it shall be lawful for the sheriff, deputy sheriff or constable of any county or township, to administer the oath or affirmation required to be administered to appraisers under the act to which this is a supplement.
Gov. Pollock, April 8, 1857.

1855 Act 509 PL 479 Section 4.- When & how the baggage of boarders may be sold - ...proprietor of hotels, inns, or boarding houses may make application to any alderman or justice of the peace of the proper city, borough, or county, who is hereby authorized to issue his warrant to any constable within said city, borough, or county, and cause him to expose said goods and baggage to public sale, after giving at least ten days notice by written or printed notices, put up in three or more public places in the ward of said city or borough, or in the township where said inn, hotel, or boarding house is located... Gov. Pollock, May 7, 1855.

1855 Act 281 PL 264 Section 15, 16, 17... constables in Philadelphia... illegal for the receiver of taxes to place any warrant against delinquent taxpayers into the hands of any constable, until such constable shall have given security by bond and warrant... in the sum of five thousand dollars... nor have in the hands of any constable at any one time, warrants for a greater amount of taxes than the amount of such bond...required to make reports and payment of all his collections on such warrants, at least once in every week... Gov. Pollock, April 21, 1855.

Repealed Act 49-2009, Section 4 (2) (viii) and (ix)

1850 Act 342 PL 549 Section 19. That in all suits which may hereafter be instituted in any court of this commonwealth, in which the sheriff of any county may be a party, when there is no coroner in commission to serve process, it shall be lawful for any constable in the county where the process has been issued, to serve the same, and perform the duties in relation, thereto which coroners are authorized to do under the laws of this commonwealth Gov. Johnston, April 22, 1850.

Repealed Act 49-2009, Section 4 (2) (vii).

now 44 Pa. C. S. 7153. (Service of process), formerly 13 P. S. 41.

1850 Act 312 PL 452 Section 9. That nothing in the 26th section of an act establishing a fee bill, passed on March 28, 1814, shall be deemed or taken to impose upon any sheriff, deputy sheriff or constable any penalty for taking the fee for service, or copy of any writ of summons, or other original process, at the time of receiving such process to be served.

Gov. Johnston, April 11, 1850.

1841 Act 144 PL 413 Section 8. ...within the county of Philadelphia, in consequence of any mob or riot ..and it shall be the duty of the said sheriff, alderman, constable, or justice of the peace, upon the receipt of said notice, or upon knowledge of such attack or intended riot, or disturbance, to take all legal means to protect such property so attacked, or threatened to be attacked, ... if the sheriff, alderman, constable, or justice of the peace, shall neglect or refuse to perform his duties in the premises, he or they, so neglecting or refusing, shall be liable for the damages done to such property, to be recovered by an action on the case in the court of common pleas of the proper county, and shall be deemed guilty of a misdemeanor in office, and on conviction thereof by the proper court, his commission shall be void, Gov. Porter, May 31, 1841.

1841 Act 141 PL 400 Section 14. That the courts of quarter sessions of each county shall have full power, on petition of any surety of any constable, setting forth the complaint, and verified by affidavit, to inquire into official conduct of such constable, and in all cases where said court shall be satisfied that from habits of intemperance or neglect of duty, any constable is unfit or incompetent to discharge his official duties, it shall be lawful for said courts, respectively, to decree the removal of such constable from office, unless such constable gives such additional surety as the court may direct, and to appoint a suitable person to fill the vacancy who shall have a freehold estate with at least one thousand dollars beyond encumbrance, or give security, as in other cases of constables, to continue in office until the next succeeding election for constable... said court shall decree the removal of such constable from office, and fill the vacancy in the same manner as is provided herein for cases of constables incompetent to act, from habits of intemperance. Gov. Porter, May 27, 1841.

Repealed Act 49-2009, Section 4 (2) (vi).

now 44 Pa. C. S. 7172 (Incompetence), formerly 13 P.S. 31

1841 Act 258 PL 1 Section 12. ...judgment against a constable for the amount of an execution together with costs, on which judgment there shall be no stay of execution, shall not be construed to deprive the constable of the right to appeal to the court of common pleas...as in the case of other defendants. Gov. Porter, October 13, 1840.

Repealed Act 49-2009, Section 4 (2) (v)

1839 Act 149 PL 377 Section 2 ...required the proper constable to immediately transmit by mail to the Governor the returns of elections of alderman and justices of the peace, and a duplicate return, shall be handed by such constable, to the prothonotary of the proper county ...to issue commissions to such persons as appeared to be duly elected. Gov. Porter, June 21, 1839.

Repealed Act , April 13, 1859 (as to duties of constables).

see also Opinions of the Attorney General – April 21, 1898.

see also Opinions of the Attorney General – April 17, 1884.

1834 Act 247 PL 537 An act relating to counties and townships, and county and township officers... Sections 107-114:

107- it shall be the duty of every person elected as constable of a township to accept or decline the office on the first day of the next court of quarter sessions, and if failing to do so be fined \$ 40. (13 P. S. 5)

108. Constable of a township to possess a freehold estate, clear of all encumbrances, of at least \$ 1,000 or be required to post a bond of constable of not less than \$ 500 or more than \$ 3,000, as the court shall direct. (13 P. S. 6)

109. If (a vacancy occurs in the office of constable of a township), the court shall appoint some other respectable person...to serve as constable until the next annual election and until a successor be duly appointed. (13 P. S. 12)

110. If a duly elected or appointed constable, with a freehold estate of proper value, shall refuse or neglect to serve as constable or shall not procure a deputy to undertake the duties thereof, shall be fined \$ 40. (13 P. S. 7)

111. No person shall be liable (for the \$ 40 fine) if they served, personally or by deputy, as constable of the same township within the past 15 years, or have paid the \$ 40 fine thereof. (13 P. S. 8)

112. the bond to be given by constables shall be in the sum not less than \$ 500 nor more than \$ 3,000

and shall be taken by the clerk of court in the name of the Commonwealth, with conditions for the just and faithful discharge of the duties of the constable, and shall be held in trust for the use and benefit of all persons who may sustain injury from the constable in his official capacity by reason of neglect of duty.... (13 P. S. 9)

113. no deputy shall be appointed by any constable, either by general or partial deputation, without approbation of the court of quarter sessions.. (13 P. S. 22)

114. in the event of death, inability or refusal to act of his deputy, the constable of any township may, with the approbation of the court of quarter sessions, appoint another deputy, with full authority to act as such until the next regular session of such court, and for the acts of such deputy, the constable and his sureties shall be liable...the constable shall file a written copy of such deputation with the clerk of courts. (13 P. S. 23)

116. nothing in this act contained shall be so construed as to repeal any special provision heretofore made by law, for any city, borough, district or township in this commonwealth. (13 P. S. 13) Gov. Wolf, April 15, 1834.

Repealed Act 49-2009, Section 4 (2) (iv)

now 44 Pa. C. S. 7114 (b) (c). (Townships), formerly 13 P. S. 6, formerly 13 P. S. 9.

now 44 Pa. C. S. 7121 (Constables), formerly 13 P. S. 12.

now 44 Pa. C. S. 7122 (Deputy constables), formerly 13 P. S. 22, formerly 13 P. S. 23.

now 44 Pa. C. S. 7178 (Failure to serve in a township), formerly 13 P. S. 5, formerly 13 P.S. 7, formerly 13 P. S. 8.

1834 Act 52 PL 72 That the town council of the borough of Carlisle shall have power ... to appoint one of the constables of the said borough, or any other suitable citizen of the same, high constable of said borough... and such high constable so appointed shall perform all the duties, and be subject to all the penalties and provisions which are now by law proscribed and established for the regulation of the high constable in the said borough. Gov. Wolf, March 17, 1834.

1829 Act 216 PL 369 section 3 ...where any constable has been or shall be entrusted with the execution of any process, for the collection of money, and by neglect of duty has failed or shall fail to collect the same, by means whereof the bail or security for such constable has been or shall be compelled to pay the amount of any judgement or judgements, such payment shall vest in the person or persons paying as aforesaid, the equitable interest in such judgement... Gov. Shulze, April 24, 1829.

Repealed Act 49-2009, Section 4 (2) (iii)

now 44 Pa. C. S. 7177 (Failure to execute process), formerly 13 P. S. 88.

1820 Chapter CVIII PL 156 constables were required to give receipts to defendants for money received by them in all civil actions, penalty for not providing receipt. Constables were required to execute process against other constables. Proceedings to be followed for the neglect to pay overplus to the defendant. Gov. Findlay, March 28, 1820.

Repealed Act PL 872 section 1201, June 24, 1939. formerly 13 P. S. 42, formerly 13 P. S. 83, formerly 13 P. S. 85.

1815 Act PL 48 Gov. Snyder, April 12, 1815.

1814 Chapter IX PL 28 an act allowing compensation to constables for attending the several courts within this commonwealth... no constable shall be obliged to serve more than one week at any one time...for one dollar for each and every day he or they shall have respectively attended. Gov. Snyder, January 21, 1814.

Repealed 1992 – Act 108 PL 717, November 24, 1992, formerly 13 P. S. 51.

1810 Act 132 PL 208 Section 12 and 19. concerns constable levies and sales, liabilities of surety of constable who may absconds or becomes insolvent. Court may issue a writ of scire facias and proceed against the security. Gov. Snyder, March 20, 1810.

Repealed Act 49-2009, Section 4 (2) (ii).

now 44 Pa. C. S. 7156 (Executions), formerly 13 P. S.

now 44 Pa. C. S. 7174 (Action against security), formerly 13 P. S. 82, formerly 13 P. S. 87.

1799 Sm. L. 3/ 2012 the acting constable shall within six days after the election for constable, give notice in writing to the person elected to be constable, and if failing to do so, be fined \$ 16. If any person elected constable and so notified shall refuse or neglect to appear on the first day of next court of quarter sessions to decline or accept said office, be fined \$ 16. Gov. Mifflin, March 1, 1799.

Repealed Act 49-2009, Section 4 (2) (i).

now 44 Pa. C. S. 7171 (Election notice in certain areas), formerly 13 P. S. 4.

1785 2 Sm Law 275 Habeas Corpus duty of constable to execute any writ of habeas corpus ...fined 100 pounds and incapable of holding office Feb 18, 1785

1777 Organization of the PA Militia

required compulsory enrollment by constables of all able bodied white males between the ages of 18 and 53 to repel invaders... Act of the Assembly, President Wharton, March 17, 1777.

1771 1 Sm Law 350 Chapter 636 (DCXXXVI) an act dealing with the nightly watch in the city of Philadelphia, enlightening lamps (street lights), appointing Wardens... II. that the Mayor, Recorder, four Aldermen together with the wardens, shall make orders and regulations, for the better government of the said constables and watchmen...III. that all orders, regulations, ...shall be written or printed and shall be delivered to all and every of the constables of the said city...as shall relate to the conduct and government of the watchmen so to be hired... IV. ..the night watch... from 9 PM to 6 AM (in winter) and from 10 PM to 4 AM (in summer): And the constables shall, in their several turns and courses of watching, use their best endeavors to prevent fires, murders, burglaries, robberies, and other outrages and disorders, within the said city; and to that end shall, and they are hereby empowered and required to arrest and apprehend all night-walkers, malefactors and suspected persons, who shall be found wandering, and misbehaving themselves, and shall take the person or persons who shall be so apprehended, as soon conveniently as they may, before one or more of the Justices of the Peace...shall report on any misbehavior or neglect of duty of the watchmen to the Wardens...And the said constable, for every night's watching as aforesaid...shall be paid at the rate of three shillings per night. Lt. Governor John Penn,

1771 1 Sm Law 313 Chapter 620 (DCXX) duty to seize and confiscate all oysters and rockfish offered for sale between May 10 – September 1 in any year ...and the Clerk of the market, or any Overseer of the poor or constable in the city of Philadelphia, or any Overseer of the poor or constable of the borough, district or township respectively, in which any fish or oysters shall be offered to sale contrary to this act, shall, and are hereby required immediately to seize the same, for the use of the poor of such city, borough, district or township... Lt. Governor John Penn, March 9, 1771.

17?? 1 Sm Law 228 Chapter ?? prohibiting to hunt, chase or follow any deer, buck, doe, fawn or other wild beast, wild fowl, or game whatsoever or shall set traps for beaver, or other beasts, without the limits of the lands purchased of the Indians by the Proprietaries of this province II. That the constable of each respective township, in every county of this province, having any knowledge of any offenses against this act, shall, and he is hereby required, under the penalty of five pounds, to present, on oath or affirmation, every such offense to someone Justice of the Peace of their respective counties, or before the justices of the General Quarter Sessions of the Peace for the same county, together with the name or names of such offenders, that they may be tried, agreeable to the directions of this act. Lt. Governor

1705 1 Sm Law 25 Chapter 119 (CXIX) IV. That no person or persons, upon the first day of the week (Sunday), shall serve or execute, or cause to be served or executed, any writ, precept, warrant, order, judgement or decree, except in cases of treason, felony, or breach of the peace... V. That all persons who are found drinking and tippling in ale-houses, taverns, or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offense, forfeit and pay one shilling and sixpence, to any constable that shall demand the same, to the use of the poor: And all constables are hereby empowered, and by virtue of their office required, to search public houses and places suspected to entertain such tipplers, and them, when found, quietly to disperse; but in case of refusal, to bring the persons so refusing before the next Justice of the Peace, who may commit such offenders to the stocks... Lt. Governor John Evans, 1705

**LEO
STATUS**

Pennsylvania Statutes

Title 37 (Law), Section 21.1 – Definitions

<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/037/chapter21/s21.1.html>

Law enforcement officer—A sheriff, deputy sheriff, **constable, deputy constable**, detective, police officer of this Commonwealth, or any political subdivision, school district, or municipal authority thereof.

...

Title 4 (Administration), Section 89.1 – Definitions

<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/004/chapter89/chap89toc.html&d=#89.1>.

Law enforcement officer—A peace officer as defined in 18 Pa.C.S. § 501 (relating to definitions), a public servant concerned in the official detention as defined in 18 Pa.C.S. § 5121 (relating to escape), an officer or employee of a State correctional institution, guards or employees of county jails and prisons, or other law enforcement officers of the Commonwealth or any political subdivision thereof.

...

Title 237 (Juveniles), Chapter 1, Rule 120. – Definitions.

<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/237/chapter1/s120.html&d=reduce>

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

AGENCY

Agency Under RTKL

PAGE 3

OOR Determination – AP 2018-0471: “Accordingly, because the Constable’s primary functions are as a process server and peace officer tasked with “enforc[ing] the law and carry[ing] it out,” we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.”

...

PAGE 43

OOR Determination – AP 2018-0457: “Accordingly, because the Constable’s primary functions are as a process server and peace officer tasked with “enforc[ing] the law and carry[ing] it out,” we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.”

Referral: <https://www.openrecords.pa.gov/Appeals/DocketSheet.cfm?docket=20180471>
<https://www.openrecords.pa.gov/Appeals/DocketSheet.cfm?docket=20180457>



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**MICHELLE GROVE,
Requester**

v.

**CONSTABLE RONALD QUINN,
Respondent**

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Docket No.: AP 2018-0471

INTRODUCTION

Michelle Grove (“Requester”) submitted a request (“Request”) to Constable Ronald Quinn (“Constable”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking written communications regarding another constable. The Constable denied the Request, arguing that he is not an agency subject to the RTKL. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Constable required to take further action as directed.

FACTUAL BACKGROUND

On March 12, 2018, the Request was filed, seeking, for the time period of January 1, 2018 through March 12, 2018, “[a]ll written communications (including email) to/from/regarding Constable Grove.” The Requester also identified several “[s]earch keywords[,]” including “Casey Grove,” “Constable Grove,” “Casey,” “Grove,” “In Defense of Rural Values,” “www.constablegrove.com,” “Gregg Township,” and “Saul Alinsky[, i]nclud[ing] all replies.” On

March 15, 2018, the Constable denied the Request, arguing that he is not a public agency subject to the provisions of the RTKL and stating that he “will not be complying [with] your request for any correspondence.”

On March 15, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited the parties to supplement the record and directed the Constable to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On April 12, 2018, the Constable submitted an unsworn position statement, arguing that constables are not local agencies subject to the RTKL.²

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and

¹ The Requester granted the OOR until April 19, 2018 to issue the final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

² The Constable’s April 12, 2018 submission was received after the record closed in this matter; however, to further develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

Records in the possession of a Commonwealth or local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Constable argues that he is not an agency subject to the RTKL. The question of whether the Constable is a Commonwealth or local agency is a jurisdictional one, as the OOR only retains authority to review decisions of Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). The RTKL defines a “Commonwealth agency” as:

- (1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:
 - i. The Governor’s Office.
 - ii. The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
 - iii. An organization established by the Constitution of Pennsylvania, a statute or executive order which performs or is intended to perform an essential governmental function.

65 P.S. § 67.102. An “Independent agency” is defined as “[a]ny board, commission or other agency or officer of the Commonwealth that is not subject to the policy supervision and control of the Governor.” *Id.* Meanwhile, a “State-affiliated entity” is defined as “[a] Commonwealth authority or Commonwealth entity.” *Id.* The definition:

includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities Authority.

Id.

In Pennsylvania, constables are a statutory creation, but are not subject to the direct policy supervision or control of the Governor, nor do they fall within the definition of a State-affiliated entity; therefore, we must determine whether constables are independent agencies. *See generally*

Appeal of Hadley, 83 A.3d 1101, 1106-07 (Pa. Commw. Ct. 2014) (“[W]e reject [the r]equester’s broad interpretation that anything referred to as an agency under any law qualifies as an agency under the RTKL”). The Commonwealth Court has noted that “the financial relationship between the Commonwealth and the agency in question is a primary factor in determining whether the agency is a Commonwealth agency.” *S.A.V.E., Inc. v. Delaware Valley Regional Planning Comm’n*, 819 A.2d 1235, 1238 (Pa. Commw. Ct. 2013). Furthermore, “[a]n organization performs an essential governmental function only where (1) the statute identifies the organization as providing essential services, or (2) the organization provides constitutionally mandated services or services undisputedly necessary to the continued existence of the Commonwealth.” *Id.* at 1241 (citing *Commonwealth College of Phila. v. Brown*, 674 A.2d 670 (Pa. 1996)).

With respect to constables, the Pennsylvania Supreme Court has concluded that:

... a constable does not act for or under the control of the Commonwealth or a political subdivision. A constable is not an employee of the state, judiciary, county, or municipality in which he or she works. A constable is an independent contractor.

Ward v. Commonwealth, 65 A.3d 1078, 1082 (Pa. Commw. Ct. 2013) (citing *In re Act 147 of 1990*, 598 A.2d 985, 990 (Pa. 1991)). Additionally, constables have little financial relationship with the Commonwealth, as they are not salaried employees of the Commonwealth, do not depend on state funding to operate and are not subject to annual audits by the Commonwealth; rather, constables are independent contractors who collect payment on a per job basis in accordance with statute. *See* 44 Pa.C.S. §§ 7161-7166 (setting forth fees and compensation that may be collected by constables). Constables do not have a direct financial relationship with the Commonwealth and do not perform an essential governmental function, as their services are not identified as essential within their governing statute, are not mandated by the Pennsylvania Constitution, and there is no indication that “the survival of the Commonwealth would be in jeopardy” without the functions

performed by constables. *See Brown*, 674 A.2d at 671. Therefore, constables are not independent agencies as contemplated in the RTKL.

However, the inquiry is not complete. The RTKL defines “local agency” as:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

65 P.S. § 67.102. While constables do not meet the definition of “local agency” as defined in subsection (1) of Section 102 of the RTKL, we must determine whether they fall under one of the types of entities delineated in subsection (2), such as a “local” or “municipal” agency. *See Appeal of Hadley*, 83 A.3d at 1106-07 (focusing on whether an agency was “governmental in nature” and whether the agency served an exclusively “governmental function” when determining whether it was any entity set forth in subsection (2) of the definition of local agency). The Supreme Court, during its discussion of constables’ proper place within government, compared constables to district attorneys and sheriffs, explaining as follows:

As a peace officer, and as a process server, a constable belongs analytically to the *executive branch of government*, even though his job is obviously related to the courts. It is the constable’s job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and police generally. Act 147 is unconstitutional and violates the separate of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory power of the judicial branch.... Personnel whose central functions and activities partake of *exercising executive powers* cannot be arbitrarily made part of another branch of government whose functions they do not perform.

In re Act 147, 598 A.2d at 990 (internal citations omitted) (emphasis added); *see also Miller v. County of Centre*, 173 A.3d 1162, 1175-76 (Pa. 2017) (stating that the “function” of constables “is law enforcement and thus makes them members of the executive branch...”).

Constables are authorized, by statute, to perform certain enumerated duties, including preserving the peace during elections, *see* 44 Pa.C.S. § 7152; serving process, *see* 44 Pa.C.S. § 7153; executing warrants for the purpose of delinquent tax collection, 44 Pa.C.S. § 7154; arresting persons who violate forest laws, 44 Pa.C.S. § 7155; and, in the case of boroughs, arresting those guilty of, among other things, breaching the peace, disorderly conduct, drunkenness or acts tending to imperil the personal security or property of citizens, as well as those violating any borough ordinance for which a fine or penalty is imposed, 44 Pa.C.S. § 7158. Furthermore, “[a] court may summon a constable to appear before it and direct the constable to investigate a complaint of a violation of law or of a condition which a constable is required to report to the court and to make a report of his investigation.” 44 Pa.C.S. § 7157(b).³ Many of a constable’s functions, particularly those involving law enforcement and the powers of arrest, are governmental in nature.

Unlike the economic development corporation in *Hadley*, constables perform some governmental functions,⁴ yet they do not fall within the supervisory orbit or control of any Commonwealth, local or judicial agency. *See In re Act 147*, 598 A.2d at 986 (holding that a constable is an independent contractor); *see also Rosenwald v. Barbieri*, 462 A.2d 644 (Pa. 1983). Additionally, the statute governing constables is silent regarding the constables’ status as an agency under the RTKL and whether their records may be requested thereunder. *Cf.* 72 P.S. §§ 5511.4c(a), (c)(1) (stating that a tax collector is not an “agency” under the RTKL); *Honaman v. Twp. of Lower Merion*, 13 A.3d 1014 (Pa. Commw. Ct. 2011) (concluding that the locally elected tax collector’s records may not be requested directly from the tax collector and that the tax

³ Constables are also authorized to appoint deputy constables, subject to the approval of the county court of common pleas, so long as the prospective deputy constable is a *bona fide* resident of the ward, borough or township for which he or she is appointed and continues to be a *bona fide* resident for the duration of the appointment. 44 Pa.C.S. § 7122.

⁴ While the issue of whether an entity performs an “essential governmental function” is relevant to the definition of “Commonwealth agency,” there is no requirement that an entity perform essential functions in order to qualify as a local agency.

collector's records were not records under the RTKL). Accordingly, because the Constable's primary functions are as a process server and peace officer tasked with "enforc[ing] the law and carry[ing] it out," we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.⁵ See *Grove v. Constable John-Walter Weiser*, OOR Dkt. AP 2018-0457, 2018 PA O.O.R.D. LEXIS ____.

Because the Constable has not raised an exemption under the RTKL or any other reason for denying access to the requested records, the Constable has failed to meet its burden of proof for withholding the records under the RTKL. See 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Constable is required to provide the Requester with all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Centre County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁶ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁵ The OOR has previously determined that records may not be requested directly from an elected official but, instead, must be sought from the underlying agency. See, e.g., *Campbell v. Stacy Parks Miller*, OOR Dkt. AP 2016-1610, 2016 PA O.O.R.D. LEXIS 1464 (holding that an individual district attorney is not a local agency under the RTKL); *Donahue v. Office of Schuylkill County Commissioner Frank Staudenmeier*, OOR Dkt. AP 2012-0786, 2012 PA O.O.R.D. LEXIS 780 (holding that "[a]n individual county commissioner is neither a 'Commonwealth agency' nor a 'local agency' for purposes of the [RTKL]"). However, given the unique nature of constables and the fact that there is not a defined, uniform office through which public records may be accessed, such as a district attorney's office, as constables are not employees of any Commonwealth or local agency, the holdings in *Campbell* and *Donahue* are inapplicable to constables.

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: 16 April 2018

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Michelle Grove (via e-mail only);
Constable Ronald Quinn (via e-mail only)

Young, Joshua

From: Young, Joshua
Sent: Monday, April 16, 2018 10:22 AM
To: 'michelleyvonnegrove@gmail.com'; 'rqsvcs@comcast.net'
Subject: re: Grove v. Constable Ronald Quinn; AP 2018-0471
Attachments: 2018-0471_Grove_Constable Ronald Quinn.pdf

Dear Parties:

Attached please find the Final Determination issued in the above-referenced Right-to-Know appeal.

Very truly yours,



Joshua T. Young | Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | <http://openrecords.pa.gov>
joshyoung@pa.gov | [@OpenRecordsPA](#)

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party or parties to whom it is addressed. If received in error, please return to sender.

Young, Joshua

From: Microsoft Outlook
To: michelleyvonnegrove@gmail.com
Sent: Monday, April 16, 2018 10:22 AM
Subject: Relayed: re: Grove v. Constable Ronald Quinn; AP 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

michelleyvonnegrove@gmail.com (michelleyvonnegrove@gmail.com)

Subject: re: Grove v. Constable Ronald Quinn; AP 2018-0471

Young, Joshua

From: Microsoft Outlook
To: rgsvcs@comcast.net
Sent: Monday, April 16, 2018 10:22 AM
Subject: Relayed: re: Grove v. Constable Ronald Quinn; AP 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

rgsvcs@comcast.net (rgsvcs@comcast.net)

Subject: re: Grove v. Constable Ronald Quinn; AP 2018-0471

Young, Joshua

From: Ron Quinn <rqsvecs@comcast.net>
Sent: Friday, April 13, 2018 1:35 PM
To: 'Michelle Grove'
Cc: Young, Joshua; pmilaw@verizon.net
Subject: RE: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Yes, you misunderstand. I am merely reiterating my position on why I have not responded to your RTKL request.

Regards,
Ron Quinn Jr., MM
Constable
814.280.6647 (cell & text)
rqsvecs@comcast.net
www.ronquinnjr.com

From: Michelle Grove <michelleyvonnegrove@gmail.com>
Sent: Thursday, April 12, 2018 3:49 PM
To: Ron Quinn <rqsvecs@comcast.net>
Cc: Young, Joshua <joshyoung@pa.gov>; pmilaw@verizon.net
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Constable Quinn,

Are you saying you will not comply with this request for records, regardless of the OOR's Final Determination? I don't want to misunderstand you.

Michelle Grove

On Thu, Apr 12, 2018, 2:57 PM Ron Quinn <rqsvecs@comcast.net> wrote:

Mr. Young and others,

I will restate my position one more time. Please realize that any RTKL request can only be made to those agencies that are government sponsored or tax payer supported. The office of the constable does not meet those requirements.

Therefore, I will not be complying to your request for any correspondence. The essence of my decision can be found in the established case law from the Commonwealth Court of Pennsylvania in re: Right to Know Law Request Served on

Venango County's Tourism Promotion Agency and Lead Economic Development Agency No. 2286 C.D. 2012 dtd
November 14, 2013.

Regards,

Ron Quinn Jr., MM

Constable

814.280.6647 (cell & text)

rqsucs@comcast.net

www.ronquinnjr.com

From: Michelle Grove <michelleyvonnegrove@gmail.com>

Sent: Monday, April 09, 2018 3:08 PM

To: Young, Joshua <joshyoung@pa.gov>

Cc: pmilaw@verizon.net; rqsucs@comcast.net

Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458;
Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young,

Yes.

Thank you,

Michelle Grove

On Mon, Apr 9, 2018, 3:02 PM Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Grove:

I write to request brief extensions of time, until **April 19, 2018**, to issue the Final Determinations in the above-referenced Right-to-Know appeals. At your earliest convenience, please confirm whether you will agree to the requested extensions.

Thank you for your kind attention to this matter.

Very truly yours,



Joshua T. Young | Attorney

Office of Open Records
333 Market St., 16th Floor

Harrisburg, PA 17101-2234

(717) 346-9903 | <http://openrecords.pa.gov>

joshyoung@pa.gov | [@OpenRecordsPA](#)

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Young, Joshua

From: Michelle Grove <michelleyvonnegrove@gmail.com>
Sent: Thursday, April 12, 2018 3:49 PM
To: Ron Quinn
Cc: Young, Joshua; pmilaw@verizon.net
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

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Regards,

Ron Quinn Jr., MM

Constable

814.280.6647 (cell & text)

rqsvecs@comcast.net

www.ronquinnjr.com

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Sent: Monday, April 09, 2018 3:08 PM
To: Young, Joshua <joshyoung@pa.gov>
Cc: pmilaw@verizon.net; rqsvecs@comcast.net
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young,

Yes.

Thank you,

Michelle Grove

On Mon, Apr 9, 2018, 3:02 PM Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Grove:

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Thank you for your kind attention to this matter.

Very truly yours,



Joshua T. Young | Attorney

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Harrisburg, PA 17101-2234

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joshyoung@pa.gov | @OpenRecordsPA

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Young, Joshua

From: pmilaw@verizon.net
Sent: Monday, April 9, 2018 5:52 PM
To: Young, Joshua
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

On behalf of Weiser and Stouch, no objection. Phil Intrieri, Esq.

From: Young, Joshua
Sent: Monday, April 9, 2018 3:02 PM
To: michelleyvonnegrove@gmail.com
Cc: pmilaw@verizon.net ; rqsvecs@comcast.net
Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Dear Ms. Grove:

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Thank you for your kind attention to this matter.

Very truly yours,



Joshua T. Young | Attorney
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joshyoung@pa.gov | [@OpenRecordsPA](#)

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Young, Joshua

From: Young, Joshua
Sent: Monday, April 9, 2018 3:03 PM
To: 'michelleyvonnegrove@gmail.com'
Cc: 'pmilaw@verizon.net'; 'rqsvcs@comcast.net'
Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Dear Ms. Grove:

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Thank you for your kind attention to this matter.

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Young, Joshua

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To: rqsvc@comcast.net
Sent: Monday, April 9, 2018 3:03 PM
Subject: Relayed: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

rqsvc@comcast.net (rqsvc@comcast.net)

Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Young, Joshua

From: Microsoft Outlook
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Subject: Relayed: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

pmilaw@verizon.net (pmilaw@verizon.net)

Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

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michelleyvonnegrove@gmail.com (michelleyvonnegrove@gmail.com)

Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Young, Joshua

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Sent: Monday, April 9, 2018 3:08 PM
To: Young, Joshua
Cc: pmilaw@verizon.net; rqsvcs@comcast.net
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young,
Yes.
Thank you,
Michelle Grove

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Young, Joshua

From: Ron Quinn <rqsvcs@comcast.net>
Sent: Thursday, April 12, 2018 2:57 PM
To: 'Michelle Grove'; Young, Joshua
Cc: pmilaw@verizon.net
Subject: RE: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young and others,

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Regards,
Ron Quinn Jr., MM
Constable
814.280.6647 (cell & text)
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To: Young, Joshua <joshyoung@pa.gov>
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Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

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Michelle Grove

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Very truly yours,



Joshua T. Young | Attorney

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Young, Joshua

From: Michelle Grove <michelleyvonnegrove@gmail.com>
Sent: Tuesday, March 27, 2018 11:44 PM
To: Young, Joshua
Cc: rqsvecs@comcast.net
Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471

Mr. Young,

Since Constable Quinn has not submitted anything to the OOR, my only argument is this:

Pennsylvania State Constables are subject the RTKL.

Further, I ask the OOR to determine if this a "bad faith" denial. The Constable has made it clear in his initial response and subsequent inaction that he refuses to cooperate.

Michelle Grove



pennsylvania
OFFICE OF OPEN RECORDS

March 16, 2018

Via E-Mail only:

Michelle Grove
PO Box 253
Spring Mills, PA 16875
michelleyvonnegrove@gmail.com

Via E-Mail only:

Ronald Quinn
Agency Open Records Officer
Constable Ronald Quinn
2011 Highland
State College, PA 16803
rqsvcs@comcast.net

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2018-0471

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on **March 15, 2018**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR’s Final Determination is currently due on **April 16, 2018**.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency’s position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR’s website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by **11:59:59 p.m. on March 27, 2018**. The record closing date is seven (7) business days from the date of this letter unless the proceedings have been stayed for the parties to submit a completed mediation agreement form, then the record will remain open for

seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

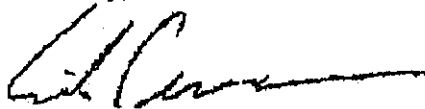
Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

Public Record Notice: All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR’s Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR’s website and searchable on-line.

If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please e-mail the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Joshua Young, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

E-MAIL:

joshyoung@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____ Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Thursday, March 15, 2018 8:07 PM
To: michelleyvonnegrove@gmail.com
Subject: PA Office of Open Records - Appeal Confirmation



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name: Michelle Grove
Address 1: PO Box 253
Address 2:
City: Spring Mills
State: Pennsylvania
Zip: 16875
Phone: 814-470-1132
Fax:
Email: michelleyvonnegrove@gmail.com
Agency (typed): Constable Ronald Quinn
Agency Address 1: 2011 Highland
Agency Address 2:
Agency City: State College
Agency State: Pennsylvania
Agency Zip: 16803
Agency Phone: 814-280-6647
Agency Fax:
Agency Email: rqsvcs@comcast.net
Records Requested: 1/1/2018-3/12/2018 All written communications (including email) to/from/regarding Constable Grove. Search keywords include: "Casey Grove" "Constable Grove" "Casey"

RECEIVED

MAR 15 2018

OFFICE OF OPEN RECORDS

"Grove" "In Defense of Rural Values" "www.constablegrove.com" "Gregg Township"
"Daul Alinsky" Include all replies.

Request Submitted to Agency Via: e-mail
Request Date: 03/12/2018
Response Date: 03/15/2018
No Response: No
Agency Open Records Officer: Ronald Quinn

Reasons for Appeal:

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: No

Agree to permit the OOR an additional 30 days to issue a final order: No

Interested in resolving this issue through OOR mediation: No

Attachments:

- RTKRequestForm (4).pdf
- Screenshot_20180315-200134.png

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Henry, Faith

From: Microsoft Outlook
To: michelleyvonnegrove@gmail.com
Sent: Friday, March 16, 2018 1:01 PM
Subject: Relayed: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

michelleyvonnegrove@gmail.com (michelleyvonnegrove@gmail.com)

Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471



Grove v.
Constable Ronal...

Henry, Faith

From: Microsoft Outlook
To: rqsvcs@comcast.net
Sent: Friday, March 16, 2018 1:01 PM
Subject: Relayed: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

rqsvcs@comcast.net (rqsvcs@comcast.net)

Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471



Grove v.
Constable Ronal...



Ron Quinn
to me

6:42 PM



Mrs. Grove,

First, let me state to you that I do not represent any organization in my response, and I will only answer for my elected position.

In both you and Constable Grove's zeal to obtain an air of importance and relevance, you neglected to realize that any RTKL request can only be made to those agencies that are government sponsored or tax payer supported. The office of the constable does not meet those requirements.

Therefore, I will not be complying to your request for any correspondence.

Regards,
Ron Quinn Jr., MM
Constable
814.280.6647 (cell & text)
rqsucs@comcast.net
www.ronquinnjr.com

...





pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 3/12/2018

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Constable Ronald Quinn, 2011 Highland,
State College, PA 16803

NAME OF REQUESTER: Michelle Grove

STREET ADDRESS: PO Box 253

CITY/STATE/COUNTY/ZIP(Required): Spring Mills, PA 16875

TELEPHONE (Optional): 814-470-1132 EMAIL (optional): michelleyvonnegrove@gmail.com

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

1/1/2018-3/12/2018 All written communications (including email) to/from/regarding Constable Grove. Search keywords include: "Casey Grove" "Constable Grove" "Casey" "Grove" "In Defense of Rural Values" "www.constablegrove.com" "Gregg Township" "Saul Alinsky" Include all replies.

IF ELECTRONIC COPIES ARE UNAVAILABLE, I WILL INSPECT THE RECORDS AT YOUR OFFICE.

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Henry, Faith

From: DC, OpenRecords
Sent: Friday, March 16, 2018 12:58 PM
To: 'michelleyvonnegrove@gmail.com'; 'rqsvcs@comcast.net'
Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471
Attachments: 2018-0471_Grove-ConstableRonaldQuinn.pdf

Dear Parties,

Please see the attached appeal that has been filed with the Office of Open Records. This matter has been assigned to an Appeals Officer (contact information can be found on page 3 of the attachment).

Please forward all future correspondence directly to the Appeals Officer and all other parties.

Sincerely,



Faith Henry

Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | <http://openrecords.pa.gov>

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

As of Monday, February 5, 2018, the OOR's new physical and mailing address is 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. The other contact information has not changed: telephone (717) 346-9903; fax (717) 425-5343; e-mail address openrecords@pa.gov; webpage www.openrecords.pa.gov.

Constable denied the Request, arguing that he is not a public agency subject to the provisions of the RTKL and, alternatively, that the requested records would reflect internal, predecisional deliberations, 65 P.S. § 67.708(b)(10)(i)(A).

On March 13, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record and directed the Constable to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On March 20, 2018, the Constable submitted a position statement, reiterating the arguments above, and further arguing that the Request is disruptive, *see* 65 P.S. § 67.506(a), that the appeal is deficient under 65 P.S. § 67.1101(a), and that the Constable does not possess the requested records.¹ In support of his arguments, the Constable provided an attestation, made under the penalty of perjury, from the Constable.

Along with the Constable's position statement, the Commonwealth Constable Association ("Association") submitted a request to participate as a direct interest participant. However, in support of its request to participate, the Association attached the same position statement and attestation submitted by the Constable.² Because the submission provided by the Association was duplicative and the Association failed to establish its interest in the requested records, the OOR denied the Association's request to participate on March 27, 2018. *See* 65 P.S. § 67.1101(c)(2) (permitting an appeals officer to grant a request to participate if "the appeals officer believes the information will be probative"); 65 P.S. § 67.1102(a)(2) (permitting an appeals officer to "limit the nature and extent of evidence found to be cumulative").

¹ The Constable is permitted to raise additional reasons for denying access to records on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

² The Constable and the Association are represented by the same legal counsel, Philip Intrieri, Esq., who provided the OOR with the Constable's submission and the Association's request to participate at the same time.

On March 21, 2018, the Requester submitted an unsworn position statement addressing the Constable's arguments.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

Records in the possession of a Commonwealth or local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether

a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The appeal is sufficient under Section 1101(a)(1) of the RTKL

The Constable argues that the appeal is deficient because the Requester did not submit “a concise statement of the grounds supporting why the records are public records.” Section 1101(a)(1) of the RTKL requires appeals to “state the grounds upon which the requester asserts that the record is a public record ... and address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1); *see also Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specific in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). Pursuant to this section, the Commonwealth Court

has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012); *see also ACLU of Pa. v. City of Pittsburgh*, 116 A.3d 1189 (Pa. Commw. Ct. 2015) (holding that an appeal did not sufficiently address an agency’s grounds by “argu[ing] that the RTKL places the burden of proof upon the [agency] and that the [agency] has provided no ... information in support of its assertions that” the records were exempt).

When filing her appeal, the Requester used the OOR’s Standard Appeal Form, which states that “[b]y submitting this form, I am appealing the Agency’s denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.” Even though the Requester does not specifically address each reason for denial raised by the Constable or provide additional detail regarding the public nature of the requested records, the Commonwealth Court has held that a general statement that records are public and not subject to an exemption is sufficient to meet the requirements of Section 1101(a)(1). *See Barnett v. Pa. Dep’t of Pub. Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). Therefore, the appeal is sufficient, and the OOR may reach the merits of the appeal.

2. The Constable is a local agency subject to the RTKL

The Constable argues that he is not an agency subject to the RTKL; rather, he claims that constables are “locally-elected in boroughs, townships, and all cities except Philadelphia” and “perform the majority of their work for the unified judicial system....” As such, the Constable contends that he neither acts for nor is he controlled by the Commonwealth or the local agency from which he is elected. In support of his argument, the Constable attests as follows:

That under the current state of the law, I [cannot] claim to be an agency subject to the Pennsylvania Open Records Law.

That I have neither the authority, nor the government funding to appoint an Open Records Officer....

That it is my belief that the Requester is attempting to obtain electronic and other communications arising from my membership in the Capital Area Constables Association, Inc. d/b/a Commonwealth Constables Association; a duly-incorporated, private, non-profit association not subject to the Open Records Law. That further, such records, if they exist, relate to issuance of a press release of that Association regarding one Constable Grove on February 2, 2018....

That it is my belief that the instant [R]equest is actually an inappropriate attempt to obtain the private records of a fraternal association under the pretense of a [RTKL R]equest addressed to a public official.

The question of whether the Constable is a Commonwealth or local agency is a jurisdictional one, as the OOR only retains authority to review decisions of Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). The RTKL defines a “Commonwealth agency” as:

(1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:

- i. The Governor’s Office.
- ii. The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
- iii. An organization established by the Constitution of Pennsylvania, a statute or executive order which performs or is intended to perform an essential governmental function.

65 P.S. § 67.102. An “Independent agency” is defined as “[a]ny board, commission or other agency or officer of the Commonwealth that is not subject to the policy supervision and control of the Governor.” *Id.* Meanwhile, a “State-affiliated entity” is defined as “[a] Commonwealth authority or Commonwealth entity.” *Id.* The definition:

includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania

Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities Authority.

Id.

In Pennsylvania, constables are a statutory creation, but are not subject to the direct policy supervision or control of the Governor, nor do they fall within the definition of a State-affiliated entity; therefore, we must determine whether constables are independent agencies. *See generally Appeal of Hadley*, 83 A.3d 1101, 1106-07 (Pa. Commw. Ct. 2014) (“[W]e reject [the r]equester’s broad interpretation that anything referred to as an agency under any law qualifies as an agency under the RTKL”). The Commonwealth Court has noted that “the financial relationship between the Commonwealth and the agency in question is a primary factor in determining whether the agency is a Commonwealth agency.” *S.A.V.E., Inc. v. Delaware Valley Regional Planning Comm’n*, 819 A.2d 1235, 1238 (Pa. Commw. Ct. 2013). Furthermore, “[a]n organization performs an essential governmental function only where (1) the statute identifies the organization as providing essential services, or (2) the organization provides constitutionally mandated services or services undisputedly necessary to the continued existence of the Commonwealth.” *Id.* at 1241 (citing *Commonwealth College of Phila. v. Brown*, 674 A.2d 670 (Pa. 1996)).

With respect to constables, the Pennsylvania Supreme Court has concluded that:

... a constable does not act for or under the control of the Commonwealth or a political subdivision. A constable is not an employee of the state, judiciary, county, or municipality in which he or she works. A constable is an independent contractor.

Ward v. Commonwealth, 65 A.3d 1078, 1082 (Pa. Commw. Ct. 2013) (citing *In re Act 147 of 1990*, 598 A.2d 985, 990 (Pa. 1991)). Additionally, constables have little financial relationship with the

Commonwealth, as they are not salaried employees of the Commonwealth, do not depend on state funding to operate and are not subject to annual audits by the Commonwealth; rather, constables are independent contractors who collect payment on a per job basis in accordance with statute. *See* 44 Pa.C.S. §§ 7161-7166 (setting forth fees and compensation that may be collected by constables). Constables do not have a direct financial relationship with the Commonwealth and do not perform an essential governmental function, as their services are not identified as essential within their governing statute, are not mandated by the Pennsylvania Constitution, and there is no indication that “the survival of the Commonwealth would be in jeopardy” without the functions performed by constables. *See Brown*, 674 A.2d at 671. Therefore, constables are not independent agencies as contemplated in the RTKL.

However, the inquiry is not complete. The RTKL defines “local agency” as:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

65 P.S. § 67.102. While constables do not meet the definition of “local agency” as defined in subsection (1) of Section 102 of the RTKL, we must determine whether they fall under one of the types of entities delineated in subsection (2), such as a “local” or “municipal” agency. *See Appeal of Hadley*, 83 A.3d at 1106-07 (focusing on whether an agency was “governmental in nature” and whether the agency served an exclusively “governmental function” when determining whether it was any entity set forth in subsection (2) of the definition of local agency). The Supreme Court, during its discussion of constables’ proper place within government, compared constables to district attorneys and sheriffs, explaining as follows:

As a peace officer, and as a process server, a constable belongs analytically to the *executive branch of government*, even though his job is obviously related to the

courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and police generally. Act 147 is unconstitutional and violates the separate of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory power of the judicial branch.... Personnel whose central functions and activities partake of *exercising executive powers* cannot be arbitrarily made part of another branch of government whose functions they do not perform.

In re Act 147, 598 A.2d at 990 (internal citations omitted) (emphasis added); *see also Miller v. County of Centre*, 173 A.3d 1162, 1175-76 (Pa. 2017) (stating that the “function” of constables “is law enforcement and thus makes them members of the executive branch...”).

Constables are authorized, by statute, to perform certain enumerated duties, including preserving the peace during elections, *see* 44 Pa.C.S. § 7152; serving process, *see* 44 Pa.C.S. § 7153; executing warrants for the purpose of delinquent tax collection, 44 Pa.C.S. § 7154; arresting persons who violate forest laws, 44 Pa.C.S. § 7155; and, in the case of boroughs, arresting those guilty of, among other things, breaching the peace, disorderly conduct, drunkenness or acts tending to imperil the personal security or property of citizens, as well as those violating any borough ordinance for which a fine or penalty is imposed, 44 Pa.C.S. § 7158. Furthermore, “[a] court may summon a constable to appear before it and direct the constable to investigate a complaint of a violation of law or of a condition which a constable is required to report to the court and to make a report of his investigation.” 44 Pa.C.S. § 7157(b).³ Many of a constable's functions, particularly those involving law enforcement and the powers of arrest, are governmental in nature.

Unlike the economic development corporation in *Hadley*, constables perform some governmental functions,⁴ yet they do not fall within the supervisory orbit or control of any

³ Constables are also authorized to appoint deputy constables, subject to the approval of the county court of common pleas, so long as the prospective deputy constable is a *bona fide* resident of the ward, borough or township for which he or she is appointed and continues to be a *bona fide* resident for the duration of the appointment. 44 Pa.C.S. § 7122.

⁴ While the issue of whether an entity performs an “essential governmental function” is relevant to the definition of “Commonwealth agency,” there is no requirement that an entity perform essential functions to qualify as a local agency.

Commonwealth, local or judicial agency. *See In re Act 147*, 598 A.2d at 986 (holding that a constable is an independent contractor); *see also Rosenwald v. Barbieri*, 462 A.2d 644 (Pa. 1983). Additionally, the statute governing constables is silent regarding the constables' status as an agency under the RTKL and whether their records may be requested thereunder. *Cf.* 72 P.S. §§ 5511.4c(a), (c)(1) (providing that a tax collector is not an "agency" under the RTKL); *Honaman v. Twp. of Lower Merion*, 13 A.3d 1014 (Pa. Commw. Ct. 2011) (concluding that the locally elected tax collector's records may not be requested directly from the tax collector and that the tax collector's records were not records under the RTKL). **Accordingly, because the Constable's primary functions are as a process server and peace officer tasked with "enforc[ing] the law and carry[ing] it out," we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.**⁵



While the Constable correctly notes that the Commonwealth Court has found constables not to be governmental or quasi-governmental agencies for purposes of the Motor Vehicle Code ("Vehicle Code"), *see Ward*, 65 A.3d 1078; *Office of the Constable v. Pa. Dep't of Transp.*, 112 A.3d 678 (Pa. Commw. Ct. 2015), the Vehicle Code defines "governmental and quasi-governmental entities" as "[t]he Commonwealth," "[p]olitical subdivisions," "[s]tate and local authorities," "[s]tate-related institutions of higher learning," "[t]he Federal Government," and "[o]ther states[.]" *see* 75 Pa.C.S. § 1901(a), but limits its definition of "local authorities" to "County, municipal and other local boards or bodies *having authority to enact laws relating to*

⁵ The OOR has previously determined that records may not be requested directly from an elected official but, instead, must be sought from the underlying agency. *See, e.g., Campbell v. Stacy Parks Miller*, OOR Dkt. AP 2016-1610, 2016 PA O.O.R.D. LEXIS 1464 (holding that an individual district attorney is not a local agency under the RTKL); *Donahue v. Office of Schuylkill County Commissioner Frank Staudenmeier*, OOR Dkt. AP 2012-0786, 2012 PA O.O.R.D. LEXIS 780 (holding that "[a]n individual county commissioner is neither a 'Commonwealth agency' nor a 'local agency' for purposes of the [RTKL]"). However, given the unique nature of constables and the fact that there is not a defined, uniform office through which public records may be accessed, such as a district attorney's office, as constables are not employees of any Commonwealth or local agency, the holdings in *Campbell* and *Donahue* are inapplicable to constables.

traffic” and certain “airport authorities....” 75 Pa.C.S. § 102 (defining “local authorities”) (emphasis added). As noted above, the definition of a “local agency” under the RTKL is more expansive and is not limited only to those local agencies authorized to enact traffic laws; rather, the definition includes entities such as intermediate units, charter schools, water and sewer authorities, intergovernmental agencies and other similar governmental entities.

3. The Request is not disruptive

The Constable next argues that the Request is disruptive. *See* 65 P.S. § 67.506(a). To deny a request under Section 506(a) of the RTKL, “an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[(s)]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency.’” *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see also Slate v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97 (“A repeated request alone is not enough to satisfy § 506(a)(1)”). Repeated requests for the same records, although phrased differently, may be denied as disruptive. *See Cohen v. Pa. Dep’t of Labor and Indus.*, OOR Dkt. AP 2009-0296, 2009 PA O.O.R.D. LEXIS 159; *Dougher v. Scranton Sch. Dist.*, OOR Dkt. AP 2009-0798, 2009 PA O.O.R.D. LEXIS 318 (“Slight differences in phraseology do not preclude application of [Section 506(a)]”).

Here, the Constable has not submitted evidence demonstrating that the Request has been repeatedly made to the Constable by the Requester or that responding to the Request has placed an unreasonable burden on the Constable. Therefore, the Constable has not established that the Request is disruptive. *See, e.g., Cardwell v. Southampton Twp.*, OOR Dkt. AP 2017-0163, 2017 PA O.O.R.D. LEXIS 185.

4. The Constable has proven that the requested records do not exist within its possession, custody or control

The Constable claims that he does not possess the records sought in the Request. In his attestation, the Constable attests as follows:

That upon receipt of the [R]equest, [he] conducted a thorough examination of files in the possession, custody and control of my public office for records responsive to the [R]equest underlying this appeal, specifically, I searched text messages, instant messages, Facebook posts, email, and any other written communications sent or received in my official capacity as an elected constable, and [found] such records do not exist.

That while I may be an independent contractor performing government civil process, and law enforcement functions, I have no such records responsive to this [R]equest that arise from any judicial agency....

Under the RTKL, an attestation made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Constable acted in bad faith or that the records exist, "the averments in [the attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based upon the evidence provided, therefore, the Constable has proven that the requested records do not exist within his possession, custody or control.⁶ *See Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the Constable is not required to take any further action. This Final Determination is binding on all parties. Within

⁶ There is an open question as to whether the requested records would "document[] a transaction or activity of" the Constable and, thus, be "records" under the RTKL. *See* 65 P.S. § 67.102 (defining "record"). However, because the Constable has proven that the records do not exist within his possession, custody or control, we need not address the issue in this final determination.

thirty days of the mailing date of this Final Determination, any party may appeal to the Adams County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 16 April 2018

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Michelle Grove (via e-mail only);
Philip Intrieri, Esq. (via e-mail only)

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).