

When one attempts to apply Section 407 with an expansive view of Section 603 (the view that regardless of vacancies, the Board is comprised of all potential positions), it produces an apparent requirement that there has to be a unanimous vote of three members to fill a vacancy, or to do any other work of the Township, as in paying bills, approving plans, etc.

For good reason, there is no law regulating general governmental affairs which requires a unanimous vote in order for government to transact business. The reason for this is obvious--one person of the three can stymie any government function, from paying the bills, approving minutes, appointing officers, approving plans, or approving legislation. Many of these functions have a practicable or statutory time frame that must be complied with.

In 1999, the Pennsylvania Supreme Court had the opportunity to address the number of votes needed to fill one vacancy on a 5-member Board of Supervisors when one of the sitting supervisors was absent from the meeting because of illness. The case was called *Scheipe v. Orlando*. The Pennsylvania Supreme Court held, in accordance with Section 603, that the Township had to have a majority vote of at least three members since the entire Board of Supervisors was 5 in number.

This case is clearly distinguishable from the facts in *Conewago*. *Conewago* began not with five members, but with three members of a Board of Supervisors, by virtue of a public election. In *Scheipe*, there were four members who could vote, not three. A majority of 4 is three. The *Scheipe* decision never referenced Section 407 and never referenced or addressed the situation where there is more than one concurrent vacancy on a five-member board. And, certainly, *Scheipe* does not stand for the proposition that a Board needs a unanimous vote in order to conduct business.

It was on the basis that *Conewago* Township took the action to make the appointments but did so in a manner that required a majority vote of all of the persons who had a right to vote. So, at the organizational meeting, we had all three of members of the Board of Supervisors present. Ernie Hess was appointed by a majority of the three. Jeff Sheely was appointed by a majority of 4.

Following the January 6, 2020 organizational meeting, I received a letter from counsel for Thomas Weaver and "some other concerned citizens of *Conewago* Township" concerning the vote. On behalf of the Township, I responded to the letter on January 13, 2020. On January 29, 2020, I received a copy of a Writ of Mandamus filed by Thomas Klunk and Thomas J. Weaver by other counsel engaged by said Mr. Klunk and Mr. Weaver. The Writ of Mandamus was ultimately withdrawn.

On January 30, 2020 I received a phone call from the District Attorney's office regarding a potential Quo Warranto Action. A Quo Warranto action is the only method to challenge an individual's right to hold public office.

Following discussion with the District Attorney's Office regarding the facts of this matter and the law regarding appointments, we received a letter from the District Attorney's office dated February 5, 2020. In the letter the District Attorney's office indicated that it is the conclusion of DA's office that a majority of the 5-member board is needed to fill 2 concurrent vacancies, and that a vote of a majority of the duly serving supervisors is not legally sufficient to appoint persons to fill those vacancies. The DA's letter concluded that the Board of Supervisors should refer the vacancies to the vacancy board, whose chairman would be the person who held the office of the vacancy board chairman at the time of the vacancy. This is pursuant to the General Municipal Law which provides:

Any officer of any municipal corporation of this Commonwealth who hereafter may be or heretofore has been elected or appointed and having qualified, shall hold said office until his successor is elected or appointed and duly qualifies.

The two individuals appointed at the reorganization meeting [Jeff and Ernie] have indicated to me that they volunteered to serve as supervisors for the good of the community. They both have told me that they prefer that the township not end up in a protracted dispute regarding their appointments that would result in significant cost to the taxpayers. While they believe they have much to offer the community, they are not willing to see taxpayer resources expended in a lengthy dispute just to hold onto the office. Therefore, they have informed that if the vacancy board acts to fill the vacancies in accordance with the DA's letter, they will not challenge such action, regardless of the results.

The vacancy board consists of the duly seated members of the board of supervisors (Don Knight, Louann Boyer, and Charlotte Shaffer) and one elector who, by law, serves as chair of the board. The elector previously appointed to hold the position of vacancy board chairman continues to hold that position until such time as a successor is duly seated. In Conewago Township, Ted Bortner has been appointed to serve as vacancy board chairman since 2018. Therefore, he would serve as the vacancy board chairman for the purpose of filling the openings.

On February 7, following the receipt of the DA's letter on February 6, this special meeting was called pursuant to Section 603 of the Second Class Township Code, either by the Chair or by the consent of all of the members of the Board of Supervisors, Don Knight, Louanne Boyer and Charlotte Shaffer, who did not object to the meeting but indicated that she will try to adjust her schedule to attend. The meeting was advertised in the Gettysburg Times on February 8, 2020 and notice posted in the Township building.

On February 7, I spoke with ADA Roy Keefer to confirm that his office understands the Vacancy Board to consist of the duly seated members of the Board of Supervisors plus the Chairman.

Last evening, I received a letter from Attorney Matthew Teeter who indicated that Ms. Shaffer objects to the meeting and will not participate. Therefore, while we have a quorum of the duly seated members of the Board, we do not have enough votes to transact business. Accordingly, following any public comment, the meeting will be adjourned.

Public Comment

Tom Weaver of 174 Panther Drive expressed his concerns with the Vacancy Board & Special Meeting taking place tonight and should be cancelled. Mr. Weaver expressed his concerns with the January 6, 2020 Reorganizational Meeting and the vacancies on the Board.

Bob Miller of 3176 Hanover Pike advised he was in agreement with Tom Weaver. Mr. Miller expressed his concerns with the January 6, 2020 Reorganizational meeting advising of a re-appointment to the Chair of the Vacancy Board. Mr. Miller expressed his concerns with the Election and the names on the ballot having value.

Ted Evgeniadis of 5050 N. Sherman Street, Mount Wolf, Pa. expressed his concerns with the appointment of Mr. Sheely and Mr. Hess to the Board, supporting Mr. Klunk and Mr. Weaver as write-ins for the open vacancies on the Board.

Fred Wilke of 248 Oxford Avenue expressed his concerns with the Board representing the residents of the Township.

ADJOURNMENT

The meeting adjourned at 4:57 p.m.

Respectfully Submitted:

Heather Snyder, Secretary/Treasurer