

LEGAL NOTICES, cont.

approved May 5, 1933, as amended; and that the said corporation is winding up its affairs in the manner prescribed by said law so that its corporate existence shall be ended upon the issuance of a Certificate of Dissolution by the department of State of the Commonwealth of Pennsylvania.

Maxwell, Maxwell, Dick & Walsh
Wayne Building
92 West Main Street
Waynesboro, PA 17268
Solicitors

6-12, 6-19

CORPORATE NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on June 5, 1987, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of May 5, 1933, P.L. 364, as amended and 15 P.S. §1206.

The name of the corporation is: MUSIC CITY ATTRACTIONS, INC.

The purpose or purposes for which it was organized are as follows: The corporation shall have unlimited powers to engage in and do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

WALTER K. SWARTZKOPF, JR., P.C.
2424 North Second Street
Harrisburg, PA 17110-1104
(717) 234-8084

6-19-87

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT
OF FRANKLIN COUNTY
PENNSYLVANIA —
ORPHAN'S COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be

LEGAL NOTICES, cont.

Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 2, 1987.

FRECON: First and final account, statement of proposed distribution and notice to the creditors of Chambersburg Trust Company, Executor of the Estate of Lawrence John Frecon, late of Greene Township, Franklin County, Pennsylvania, deceased.

HARGADINE: First and final account, statement of proposed distribution and notice to the creditors of Fidelity Bank, N.A. and William A. Hargadine, Executors of the Estate of Isabel F. Hargadine, late of Greene Township, Franklin County, Pennsylvania, deceased.

HAUN: First and final account, statement of proposed distribution and notice to the creditors of Judy Ann Dysinger and Farmers and Merchants Trust Company, Co-Executors of the Estate of Mildred F. Haun, late of St. Thomas Township, Franklin County, Pennsylvania, deceased.

KNAPPER: First and final account, statement of proposed distribution and notice to the creditors of Valley Bank and Trust Company, Executor of the Estate of Edna C. Knapper, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Robert J. Woods
Clerk, Orphans' Court

6-5, 6-12, 6-19, 6-26

procedure for summary offense citations to those for complaints for driving under the influence. See, Pa.R.Crim.P. Rules 55-79, 130, 132. Most obviously, the complaint for a driving under the influence violation must be more specific than a summary citation. *Id.*, Rule 132 (6) (a), (b).

Furthermore, if the legislature had wanted Pa.R.C.P. §2002 to apply to complaints, as well as tickets and citations, the term "complaints" would have been included in the statute. The mention of one thing in a statute implies the exclusion of others not expressed. *Cocco v. Degnan Chevrolet, Inc.* 64 D&C2d 6 (1973).

Taking defendant's argument to its logical end-result, the court is left with an unreasonable proposition. If a Washington Township officer arrived at the scene of a murder and immediately arrested a nearby suspect, would the charges have to be dismissed merely because the memo designated a quota of sixteen criminal arrests per officer for the month? It must be presumed that, when enacting a statute, the legislature does not intend a result that is absurd, impossible of execution, or unreasonable. 1 App.Pa.C.S.A. §1922(1). As illustrated above, adopting defendant's interpretation of §2002 would cause absurd, unreasonable consequences and, therefore, must be rejected.

ORDER OF COURT

February 9, 1987, the court, after hearing the evidence, finds the defendant, Timothy William Crider, guilty of driving under the influence.

PEFLEY V. MAYOR AND TOWN COUNCIL OF THE BOROUGH OF CHAMBERSBURG, C.P. Franklin County Branch, Misc. Doc. Vol. Y, Page 503

Local Agency Appeal - Volunteer Fire Fighter - Property Interest (Interest)

1. A volunteer firefighter with no contract or statute guaranteeing his position serves at will.
2. A voluntary relationship such as a firefighter does not fall within the meaning of property subject to protection under the 14th Amendment of the U.S. Constitution.
3. The 5th and 14th Amendments do not require a due process hearing before a volunteer firefighter can be dismissed.

OPINION AND ORDER

Before KELLER, P.J., March 27, 1986:

On July 30, 1985, the appellant filed a local agency appeal naming the Mayor and Town Council of the Borough of Chambersburg as appellees. The appeal was from the decision of the Chambersburg Fire Department as set forth in its letter dated July 15, 1985. The letter notified the appellant that he was no longer eligible to participate as a volunteer firefighter or as Assistant Chief of Administration because his membership in the Junior Hose and Truck Company # 2 had been terminated by company action on July 1, 1985. Preliminary Objections to the appeal in the and nonjoinder of a necessary party were filed on August 26, 1985. Briefs were submitted and oral arguments were heard at the November Term of Argument Court. The matter is now ripe for disposition.

The threshold issue is whether there was any appealable local agency action giving rise to our jurisdiction over this controversy. Pennsylvania Local Agency Law, 2 Pa. C.s. § 101 et seq. provides inter alia:

§752 Appeals.

Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary or judicial procedure).

2 Pa. C.S. §752.

An adjudication is defined as:
§101.

Any final order or decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

Thus, we must determine whether the fire department's letter of July 15, 1985, affected the appellant's personal or property rights.

LEGAL NOTICES, cont.

Barry N. Elliott and: In the Court of Com-
Charlotte B. Elliott, : mon Pleas of 39th Ju-
his wife, : dicial District, Penna.
Plaintiffs :
: Franklin County
: Branch

John Allison, William:
Allison, William :
Henderson, and An- :
drew Henderson, :
personal represen- : Civil Action - Law
tatives of John Alli- :
son, deceased; and :
William Allison, Ro- :
bert Allison, Patrick:
Allison, Wilken Alli- : No. A.D. 1987 - 47
son, Mary Hender- :
son Catherine Alli- :
son, Margaret Alli- :
son, Agnes Allison, :
Elizabeth Allison, : Action to Quiet Title
Sydia Allison and :
Rebecca Allison, :
their personal repre- :
sentatives, heirs, suc- :
cessors and assigns, :
Defendants :

TO THE DEFENDANTS, John Allison, Wil-
liam Allison, William Henderson, and Andrew
Henderson personal representatives of John
Allison, deceased; and William Allison, Ro-
bert Allison, Patrick Allison, Wilken Allison,
Mary Henderson, Catherine Allison, Margaret
Allison, Agnes Allison, Elizabeth Allison,
Sydia Allison, and Rebecca Allison, their
personal representatives, heirs, successors
and assigns:

You are notified that an Order of Court has
been entered on May 27, 1987, directing that
within thirty (30) days after this publication,
you shall be forever barred from asserting
any right, lien, title or interest inconsistent
with the interest or claim set forth in the
Plaintiffs' Complaint to the land therein
specifically described:

PURPART NO. 1 generally known as 214
West Baltimore Street, Greencastle, Frank-
lin County, Pennsylvania, and being the
westerly one-half of Lot No. 227 on the
General Plan of the Borough of Greencastle,
and more fully described in deed dated
September 17, 1986 and recorded in Frank-
lin County Deed Book Volume 969, Page
117.

LEGAL NOTICES, cont.

PURPART NO. 2, TRACT NO. 1 located
on the south side of West Baltimore Street,
Greencastle, Franklin County, Pennsylvania,
and being Lot #226 on the original plan of
the Borough of Greencastle, less such por-
tion thereof as taken in condemnation by
the Commonwealth of Pennsylvania for
the construction and widening of U.S.
Route 11.

PURPART NO. 2, TRACT NO. 2 being
the eastern one-half of Lot No. 225 on the
General Plan of the Borough of Greencastle,
less that portion which was taken in con-
demnation by the Commonwealth of Penn-
sylvania for the construction and widening
of U.S. Route 11.

PURPART NO. 2, TRACT NO. 1 and
TRACT NO. 2, are more fully described in
deed dated September 30, 1986, and re-
corded in Franklin County Deed Book
Volume 969, Page 124.
Said descriptions are incorporated herein
by reference.

THOMAS M. PAINTER
ULLMAN, PAINTER AND MISNER
Attorneys for the Plaintiffs
10 East Main Street
Waynesboro, PA 17268

6-19-87

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to
the provisions of the Fictitious Name Act,
Act No. 1982-295, of the filing, with the
Department of State of the Commonwealth
of Pennsylvania, on May 20, 1987, an
application for a certificate for the con-
ducting of a business under the assumed
or fictitious name of PLAYTIME CREA-
TIONS, with its principal place of business
at 604 Strite Rd., Chambersburg, PA 17201.
The name and address or the person
owning or interested in said business is
Abrielle Tayler-Levine.

Abrielle Tayler-Levine
604 Strite Rd.
Chambersburg, PA 17201

6-19-87

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on May 27, 1987, an application for a certificate for the conducting of a business under the assumed or fictitious name of C and E Land Developers, with its principal place of business at 52 Clayton Avenue, Waynesboro, PA 17268. The names and addresses of the persons owning or interested in said business are R. Lee Royer, 208 South Potomac Street, Waynesboro, PA 17268; Linda M. Royer, 208 South Potomac Street, Waynesboro, PA 17268; David L. George, 14075 Old Route 16, Waynesboro, PA 17268; and Frances L. George, 14075 Old Route 16, Waynesboro, PA 17268.

Martin and Kornfield

6-19-87

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on May 28, 1987, an application for a certificate for the conducting of a business under the assumed or fictitious name of Sites and Stouffer Jet Lube, with its principal place of business at 1038 Lincoln Way West, Chambersburg, Pennsylvania 17201. The names and addresses of the persons owning or interested in said business are Ronald E. Sites, 1034 Lincoln Way West, Chambersburg, Pennsylvania 17201, and R. Leroy Stouffer, 1026 Marvern Drive, Chambersburg, Pennsylvania 17201.

Law Offices of Welton J. Fischer
550 Cleveland Avenue
Chambersburg, Pennsylvania 17201

6-19-87

Relying on the economic reality test, the appellant argues that he was an employee of the Fire Department and, therefore, entitled to due process protection before dismissal. An employment relationship may be implied from the economic relationship between the parties notwithstanding the absence of traditional indicia of employment such as right of control or compensation in wages. See *United States v. Silk*, 331 U.S. 704, 67 S.C. 1463, 91 L. Ed. 1757 (1947). Appellant relies in particular on *Tony and Susan Alamo Foundation v. Secretary of Labor*, 53 U.S. L.W. 4489 (April 23, 1985). In *Alamo*, the question was whether the requirements of the Fair Labor Standards Act, 29 U.S.C. §201 et seq. applied to workers engaged in the commercial activities of a religious foundation. The Foundation engaged in ordinary commercial activities in competition with other businesses. The workers received no cash salaries but did expect the Foundation to provide them with food, clothing, shelter transportation and medical care. They were entirely dependent upon the Foundation for long periods. The court held that the workers were employees who received benefits in lieu of wages and that by engaging in commercial activities the Foundation had submitted itself to the standards set up by Congress for employees. The facts of the case at bar do not lend themselves to the same analysis. The Fire Company is not engaged in a business activity in competition with other businesses. Unlike the workers in *Alamo*, the volunteers do not depend on the company for their livelihood. The Fire Company has not entered the marketplace and there is no relationship existing between the Company and its volunteers equivalent to that of employer and employees. Under the economic reality list, the volunteer fire fighters are not employees.

Assuming arguendo that a volunteer fire fighter is an employee, there is no basis for finding that he holds a property right in the continuation of that employment. The general rule in Pennsylvania is that public employees do not hold a substantive property right; they serve "at will" and can be discharged at any time. *Skrocki v. Caltabiano*, 568 F. Supp. 703 (E.D. Pa. 1983). No "adjudication" occurs when an "at will" employee is fired. *Id.* Thus, a nonunion, noncivil service employee had no property right in his position despite his designation as a "permanent" employee and the decision to dismiss the employee did not constitute an "adjudication" or require a due process hearing prior to discharge. *Pivarnik v. Commonwealth, Department of Transportation*, 82 Pa. Cmwlth. 42, 474 A.2d 732 (1984). In the instant matter the pleadings do not allege that the appellant's position was guaranteed by contract or statute. At most, his position was analogous to an "at will" employee whose position could be

terminated at any time without triggering the due process provisions of the Local Agency Law.

Alternatively, appellant asserts that as and individual, and regardless of his employment status, he was entitled to due process protections because the local government intended to deprive him of his property and liberty interests.

"Liberty" and "property" are broad and majestic terms. They are among the great constitutional concepts . . . purposely left to gather meaning from experience . . . They relate to the whole domain of social and economic fact, and the statesmen who founded this nation knew too well that only a stagnant society remains unchanged . . . Yet, while the court has eschewed rigid or formalistic limitations on the protection of procedural due process, it has at the same time observed certain boundaries. For the words "Liberty" and "property" in the Due Process Clause of the Fourteenth Amendment must be given some meaning.

Board of Regents of States Colleges v. Roth, 408 U.S. 564, 571-72, 92 S. Ct. 2701, 33 L.Ed. 2d 548, 557-58 (1972).

Recognizable "property" interests are not infinite.

"To have a property interest in a benefit, a person must clearly have more than an abstract need or desire for it. He must, instead, have a legitimate claim of entitlement to it." *Id.* at 408 U.S. at 577, 92 S. Ct. at 2709, 33 L.Ed. at 561, *In Re Rivera*, 16 D&C 3d 122 (Lancaster 1980).

The sufficiency of the claim of entitlement must be decided by reference to state law. *Bishop v. Wood*, 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed. 2d 684 (1976), *A.R.A. Services v. School District of Philadelphia*, 590 F. Supp. 622 (3rd Cir. 1985).

"Furthermore, no matter what a particular person's subjective expectation may be, if the interest he seeks to have protected by the Fourteenth Amendment is terminable 'at will' by governmental authorities, there is no procedural due process protection." *Rivera*, *supra*.

See *Bishop v. Wood*, 426 U.S. 341, 96 S. Ct. 2074, 48 L.Ed. 2d 684 (1976).

In *Roth*, *supra*, a professor had a contract which was by its provisions to terminate at the end of the academic year. He was not rehired and was given no reason for the decision. His constitutional rights were not infringed upon because the terms of his contract did not create and entitlement to a continuing status. *Roth*, *supra*. In *Rivera*, the issue was whether or not the housing authority's decision to adopt a rental increase constituted an "adjudication" pursuant to 2 Pa. C.S. §101. The court held that there was no "property" interest when the authority may terminate the lease of any tenant by simply giving the appropriate notice required by a month-to-month lease; that in terminating the lease, the authority was not required to make any factual



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LEGAL NOTICES, cont.

porated under said Business Corporation Law, including, but not limited to, manufacturing, processing, owning, using and dealing in personal property of every class and description, engaging in research and development, furnishing services, and acquiring, owning, using and disposing of real property of any nature whatsoever.

Dixie C. Newhouse
Creager & Newhouse, P.A.
1329 Pennsylvania Ave.
P.O. Box 1417
Hagerstown, MD 21741

6-26-87

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with and approved by the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on June 3, 1987, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended. The name of the corporation is GORDON'S CONTINENTAL TRANSPORTATION SERVICES, INC., 1069 Lincoln Way West, Chambersburg, Franklin County, Pennsylvania 17201.

The purpose or purposes for which the corporation is incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania are to engage in, and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under said Business Corporation Law, including, but not limited to, manufacturing, processing, owning, using and dealing in personal property of every class and description, engaging in research and development, furnishing services, and acquiring, owning, using and disposing of real property of any nature whatsoever.

Dixie C. Newhouse
Creager & Newhouse, P.A.
1329 Pennsylvania Ave.
P.O. Box 1417
Hagerstown, MD 21741

6-26-87

determination or apply certain criteria; and that to suggest that a tenant has a property right in such a tenuous agreement is to stretch the definition of property beyond reasonable boundaries. In the case at bar, the appellant has donated his services as a volunteer fire fighter and the Company has accepted them. There are certain training requirements which must be met and procedures to be followed for the handling of grievances; however, the appellant has not alleged the existence of any criteria to be applied prior to dismissal by the company. Apparently, the relationship between the volunteer and the Company could be terminated by either party at any time. Like the contract in *Roth* and the lease in *Rivera*, the appellant's interest was not infringed upon because it was terminated in a manner consistent with its nature and provisions. Analogous to *Rivera*, we are satisfied that the relationship did not encompass an entitlement to a continuing status and that to define such a voluntary relationship as property within the meaning of the Fourteenth Amendment would stretch the meaning of property beyond reasonable bounds.

Appellant also asserts that he was deprived of his liberty interest. In *Roth*, the court held that although the non-retention of a college professor might make him less attractive to other employers, it would stretch the concept too far "to suggest that a person is deprived of 'liberty' when he simply is not rehired in one job but remains as free as before to seek another." *Id.* 3 L.Ed2d at 560. Similarly, in *Bishop v. Wood*, supra, the court held that there was no violation of liberty interests when there was no public disclosure of the reasons for the discharge of a public employee whose position was terminable at the will of the employer. In *Cleveland Board of Education v. Loudermill*, 53 U.S.L.W. 4306 (S.C. March 19, 1985), the court held that the petitioner's failure to allege that the reasons for dismissal were published doomed his claim. In the instant case, there is no suggestion of any public disclosure or stigma that foreclosed the appellant's freedom to join another company. His liberty right has not been violated.

Not every grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause. The determining factor is the nature of the interest. *Meachum v. Fano*, 427 U.S. 215, 96 S. Ct. 2532, 49 L.Ed2d 451 (1976). While it may be desirable for the Fire Department to give a volunteer firefighter an opportunity to be heard prior to dismissal, such a procedure is not required by the Fifth and Fourteenth Amendments. The Constitution does not guarantee wise staffing decisions. Whatever the First Amendment rights of a volunteer fire fighter may be, we are not willing to "cross the

Rubicon" and hold that the Local Agency Law is the proper form of redress for such a grievance.

We are satisfied that there is no appealable local agency action. Since we lack jurisdiction over this controversy, we need not consider the respondent's other preliminary objections.

ORDER OF COURT

NOW, this 27th day of March, 1986, the Local Agency Appeal of Sheldon L. Pefley is dismissed for lack of jurisdiction.

Exceptions are granted the appellant.

SHADLE ELECTRICAL ASSOCIATES ET AL. V. GREENCASTLE ANTRIM SCHOOL DISTRICT, C.P. Franklin County Branch, A.D. 1983-80

Contract - Arbitration - Waiver of Arbitration

1. Waiver of an arbitration clause is not lightly inferred.
2. The answering of a complaint and filing of a counterclaim does not amount to a waiver of arbitration.

Jordan D. Cunningham, Esquire, Counsel for Plaintiffs
Fredric G. Antoun, Jr., Esquire, Counsel for Defendant

OPINION AND ORDER

WALKER, J., July 31, 1986:

The plaintiff, Shadle Electrical Associates, brought suit against the defendant, Greencastle-Antrim School District, for alleged breaches of their construction contract. After the plaintiff filed a complaint, the following pleadings ensued: The defendant's answer and new matter, the defendant's amended answer and counterclaim, the plaintiff's answer and new matter to the defendant's counterclaim, and the defendant's answer and counterclaim to the plaintiff's new matter. In its last counterclaim, the defendant raised its right to arbitration, under the terms of the contract.



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