



Eastern and Western. In order to resolve that latent ambiguity the cardinal rule of all statutory construction is to ascertain and effectuate the intent of the General Assembly. *O'Rourke v. Commonwealth*, 566 Pa. 161, 778 A.2d 1194, 1201 (2001). To place statutory language in its proper context courts are to look to the occasion and necessity of the statute, the circumstances in which it was enacted, the purpose of its enactment, former law on the same subject, and what the consequences of a particular interpretation would be. *Commonwealth v. Davis*, 421 Pa. Super. 454, 618 A.2d 426, 428, 429 (1992); *see also O'Rourke v. Commonwealth, supra*, at 1201; and also *Pennsylvania Human Relations Commission v. Chester School District*, 427 Pa. 157, 233 A.2d 290, 295 (1967).

Applying these principles to Act 34 we pointed out in our memorandum that any latent ambiguity in that statute disappears upon examination of the circumstances of its enactment. Those circumstances establish that the General Assembly's legislative intent<sup>1</sup> was to create a zero deviation plan.

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<sup>1</sup>The Pennsylvania General Assembly has now expressed its legislative intent with the enactment of Act 1, the enactment of Act 34, and the enactment of Act 2002-44 amending 25 P.S. §2746. That amendment precluded alterations "in any manner" of an election district. The Armstrong County Court of Common Pleas' order of March 15, 2002 was issued in response to a petition by the Armstrong County Board of Elections (the Board). The March 15 order was not entered in an adverse or contested proceeding. A petitioner, the Board simply asked the court at a time and in a manner prohibited by statute for an order and the court granted the petition. The Court of Common Pleas action did not produce an aggrieved party and potential appellant. The Court of Common Pleas' order of March 15, like a judgment entered by confession or default, was not a final order. *Simpson v. All State Insurance Co.*, 350 Pa. Super. 239, 504 A.2d 335, 337 (1986) (*en banc*); *Orie v. Stone*, 411 Pa. Super. 481, 601 A.2d 1268, 1270 (1992), *appeal dismissed*, 533 Pa. 315, 622 A.2d 286 (1983).

Subsequent to our previous filing with this Court, on December 9, 2002, Governor Schweiker signed into law Act 2002-150 (Act 150) amending the Pennsylvania Election Code<sup>2</sup> to add a new section 506:

In administering elections for the nomination and election of candidates for the United States House of Representatives and the General Assembly, county boards of election shall adhere to the following rule: Where an election district is used in or pursuant to a congressional redistricting statute or the final plan of the Legislative Reapportionment Commission to define the boundary of a congressional district or state legislative district, the boundary of such election district shall be the boundary existing and recognized by the Legislative Reapportionment Commission for the adoption of its final plan. The boundaries of the Congressional districts, as established by statute, and state legislative districts as set forth in the final plan of the Legislative Reapportionment Commission shall remain in full force and effect for use thereafter until the next reapportionment or redistricting as required by law and shall not be deemed to be affected by any action taken pursuant to this article.

Pursuant to Act 150, the boundary of election districts<sup>3</sup> when they define congressional districts “shall be the boundary existing and recognized by the Legislative Reapportionment Commission for the adoption of its final plan.”

Pursuant to this provision, the South Buffalo District Eastern and Western have and must continue to have the boundaries recognized by the Legislative Reapportionment Commission. Those boundaries are consistent with the clear legislative intent of the General Assembly in its enactment of Act 34.

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<sup>2</sup>The Pennsylvania Election Code, 25 P.S. §2601, *et seq.* is a statutory enactment codifying nearly every aspect of the electoral process. Other laws such as Act 34 supplement it.

<sup>3</sup>An election district is Pennsylvania's designation for what is commonly referred to as a precinct.

Act 150 is not just consistent with Act 34's clear legislative intent, it is also consistent with the constitutional limitations placed upon the alterations of election districts. In our memorandum filed with the Court on October 4, we outlined that, as a matter of federal constitutional law, the task of federal redistricting must be left to state legislators. Allowing local county courts to alter congressional districts would take congressional redistricting out of the hands of the Pennsylvania General Assembly where it is constitutionally vested. The Pennsylvania Department of State and its Bureau of Commissions, Elections, and Legislation (the Bureau) is charged with executing and applying the Pennsylvania Election Code consistent with law including this constitutional principle.

Long before this action was initiated, indeed, long before the redistricting process began, the Bureau advised all sixty-seven county boards of elections that pursuant to 25 P.S. §2746 "Election districts may not be altered during the period from June 1, 2000 to April 30, 2002." (*See* Tab M). The Pennsylvania Election Codes limitations concerning the alteration of election districts are not applicable only to the creation of new districts. The text of 25 P.S. §2746 deals with more than the creation of new districts (through consolidation or division). Specifically, §2746(c)(1) requires that county board elections notify the Department of State of proposed alterations.<sup>4</sup> "The notice shall include a map and description of

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<sup>4</sup>The Board failed to file a report with the Bureau notifying it of its attempt to alter the election districts. Irrespective of the statutory freeze, the Board is required by 25 P.S. §2747(b) of the Election Code to file with the Bureau a report of election district changes. The Bureau is required to maintain these reports and their amendments for the use of the General Assembly and the Public. *See* 25 P.S.

the proposed boundary of any new or *altered* district or districts.” (Emphasis added). If the language of §2746 referred only to the establishment, abolishment, division, or consolidation of districts, *i.e.* the creation of new districts, the word new (referring to the establishment, abolishment, division or consolidation of districts) would be sufficient and the word altered would be superfluous. It is axiomatic that whenever possible statutes must be construed to give affect to every word. *Keystone Aerial Survey, Inc. v. Pennsylvania Property and Casualty Insurance Guarantee Association*, 777 A.2d 84, 90 (Pa. Super. 2001). Section 2746 is titled “[a]lterations of election districts.” The text of the statute refers to altered districts. Those references are not surplusage and clearly establish that §2746 restricts any alteration of election districts during the statutory freezeout period. Any other construction of §2746 or the Pennsylvania Election Code as a whole would take congressional redistricting out of the hands of the Pennsylvania General Assembly. Any such construction would be inconsistent with the United States Constitution.

Pursuant to the Pennsylvania Election Code, a statutory scheme the Pennsylvania Department of State is entrusted to administer, the alteration of any election district, by whatever mechanism, so as to interfere with the redistricting process as an enacted by the Pennsylvania General Assembly is precluded. Such

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§2748(b). In failing to notify the Bureau of its ill-timed attempt to alter election districts, the Board compounded its error by keeping the Bureau “in the dark” regarding its actions. The Board's failure to report as required by law also deprived the Pennsylvania General Assembly of this information. That is one of the things that 25 P.S. §2746 was designed to prevent.

actions are precluded not simply as a matter of Pennsylvania law, but as a matter of constitutional law.


**CONCLUSION**

For the reasons set forth above, this Court should enter judgment in favor of the defendants.

**Respectfully submitted,**

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**CERTIFICATE OF SERVICE**

I, **J. BART DeLONE**, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on December 20, 2002, I caused to be served a copy of the foregoing document entitled **Defendants Governor Schweiker, Secretary Weaver, and Commissioner Filling's Joinder in the Presiding Officers' Memorandum in Support of Motion for Summary Judgment**, upon the following:

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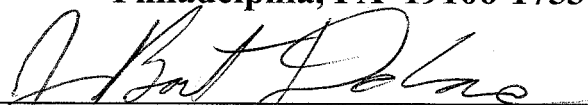
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