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COMMONWEALTH COURT
OF PENNSYLVANIA
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DENNIS M. DAVIN, in his capacity	:	
as Secretary for the Department	:	No. 569 MD 2011
of Community and Economic	:	
Development,	:	
Petitioner	:	
v.	:	
	:	
CITY OF HARRISBURG,	:	
Respondent	:	

**APPLICATION OF PA MEDIA GROUP, WITF, INC.
AND HEARST PROPERTIES INC., d/b/a WGAL-TV
FOR LEAVE TO INTERVENE**

AND NOW come, PA MEDIA GROUP, WITF, INC., and HEARST PROPERTIES INC., d/b/a WGAL-TV, (“Media Parties’), by their attorneys, NAUMAN, SMITH, SHISSLER & HALL, LLP, and move this Court pursuant to Pa. R.A. P. 123 and 1531 for leave to intervene in the above-captioned proceeding for purposes of responding to and opposing the Application of Impact Harrisburg

for a Declaratory Judgment and to file a Cross-Application for Declaratory Judgment , representing in support thereof the following:

1. PA Media Group is a print and digital news organization and the publisher of *The Patriot-News*, a newspaper of general circulation throughout central Pennsylvania with its principal offices located at 2020 Technology Parkway, Suite 300, Mechanicsburg, Cumberland County, Pennsylvania. PA Media Group also supports a digital news presence known as *PennLive*.

2. WITF, Inc., is a Pennsylvania non-profit corporation with television and radio broadcast programming throughout nineteen counties in central Pennsylvania with a focus on educational programming with its principal offices located at 4801 Lindle Road, Harrisburg, Dauphin County, Pennsylvania.

3. HEARST PROPERTIES INC., d/b/a WGAL-TV, is a television broadcasting company which owns and operates WGAL, a television station which broadcasts throughout south central Pennsylvania with principal offices located at 1300 Columbia Avenue, Lancaster, Lancaster County, Pennsylvania.

4. The Media Parties, because of their proximity to the City of Harrisburg (“City”), have consistently reported on political and financial events impacting the City and, particularly during the last several years, have reported extensively on the financial distress of the City and on its efforts for recovery

under the Municipalities Financial Recovery Act, 53 P.S. §11701.101, et seq. (“Act 47”).

5. As part of the recovery process under Act 47, the court-appointed Receiver developed what became known as the Harrisburg Strong Plan (“Plan”). The Plan, *inter alia*, provided for the creation of an entity known as “Impact Harrisburg” which would oversee the distribution of approximately 12.3 million dollars of public funds realized from the sale of the City’s parking garages, with these public funds designated solely for (1) infrastructure improvements within the City, and (2) fostering economic development within the City. This Court approved the Plan and the creation of Impact Harrisburg as part of the Plan. See, Order of September 23, 2013, 53 P.S. §11701.703(e).

6. Impact Harrisburg was thus created “pursuant to” the statutory provisions of Act 47 as authorized by this Court’s orders and Impact Harrisburg took possession of that portion of the funds designated to its mission created by the sale of the City parking garages, approximately 12.3 million dollars.

7. Impact Harrisburg chose to, but was not required to, form as a Pennsylvania non-profit corporation and its Board of Directors (“Board”) began meeting in 2015 and have been meeting on a regular basis since that time.

8. The Board of Impact Harrisburg has asserted that it is not subject to the requirements of the Pennsylvania Sunshine Act, 65 Pa.C.S.A. §701 et seq. and has not advertised its meetings, made them available for public attendance, nor complied with any other requirement of the Sunshine Act.

9. On February 25, 2016, Impact Harrisburg filed with this Court in this proceeding an Application for Leave to Intervene and an Application for Declaratory Relief asking this Court to declare, as a matter of law, that it is not an “agency” as defined under 65 Pa. C.S.A. §703 of the Sunshine Act, and thus is not required to comply with the requirements of the Sunshine Act.

10. As previously stated, Impact Harrisburg has complete oversight and control of public funds in excess of 12.3 million dollars.

11. The manner in which it deliberates and how it decides it will distribute those funds for the two public purposes with which it is charged are matters of great public concern, particularly considering the historic extreme financial distress of the City of Harrisburg and its attempts to remedy that financial peril.

12. PA Media Group made a request to Impact Harrisburg that it reconsider its opinion that it was not subject to the requirements of the Sunshine Act in a letter dated January 22, 2016 from its counsel to the Board Chairman, Neil

Grover, Esquire, a true and correct copy of which is attached hereto and marked Exhibit "A".

13. PA Media Group followed up with a second letter dated February 16, 2016, a copy of which is attached hereto and marked Exhibit "B".

14. The only response to those inquiries was notification from counsel for Impact Harrisburg, Devin Chwastyk, Esquire, on February 25, 2016 that it had filed the above-mentioned Application for Declaratory Judgment and related filings.

15. The filing of an Application to Intervene by the news media in court proceedings involving matters of great public concern as set forth above has long been recognized by the Pennsylvania Supreme Court as an appropriate means of raising assertions of public rights of access to information regarding such proceedings. Capital Cities Media, Inc. v. Toole, 506 Pa. 12, 22-23, 483 A.2d 1339, 1344 (1984) (intervention by news media is in accordance with this Court's well-established and strongly held views, and is not only adequate, but highly preferable as a means of obtaining review of alleged abridgments of the public's rights to information and access) (Chief Justice Nix, writing for a unanimous Court); Commonwealth v. Hayes, 489 Pa. 419, 414 A.2d 318 (1980), cert. denied, 449 U.S. 992, 101 S.Ct. 528 (1980).

16. Intervention of this type may properly be termed *de bene esse*, i.e., an action that is provisional in nature and for the limited purpose of permitting the intervenor to file a motion, to be considered separately, requesting that access to proceedings or other matters be granted, including opposing relief sought by other parties in that proceeding. Commonwealth v. Fenstermaker, 515 Pa. 501, n.1, 530 A.2d 414, 416 n.1 (1987).

17. Access rights to the news media, and of the general public, are identical in scope. See, Estes v. Texas, 381 U.S. 532, 540, 85 S.Ct. 1628, 1631 (1965).

18. Pa R.A.P. 1531(b) provides that a person not named originally as a respondent in an original jurisdiction matter who desires to intervene in a proceeding “may seek leave to intervene by filing an application for leave to intervene . . . with the prothonotary of the court. The application shall contain a concise statement of the interest of the applicant and the grounds upon which intervention is sought.”

19. As stated above, Impact Harrisburg has sought a declaration by this Court that it is not an “agency” under the Pennsylvania Sunshine Act, thus, the public’s right of access to Impact Harrisburg’s Board meetings and the ability to make public comment, observe the deliberations, official action and voting of the

Board and the ability to receive advance notice of meetings of the Board is at stake. In short, the public right of access to the meetings of public bodies guaranteed by the Sunshine Act is in jeopardy.

20. There is currently no party in this action that can and will assert the public's right of access under the Sunshine Act and to oppose Impact Harrisburg's assertion that it is not an "agency" subject to the requirements of the Sunshine Act.

21. Media Parties believe and therefore aver that a compelling interest exists for it to be granted access to this proceeding for purposes of responding to and opposing the Application of Impact Harrisburg for Declaratory Relief, as well as, filing its own Cross-Application for Declaratory Relief requesting this Court determine, as a matter of law, that Impact Harrisburg is an "agency" as defined under 65 Pa. C.S.A. §703 of the Pennsylvania Sunshine Act.

22. Counsel for Impact Harrisburg has indicated he does not oppose the Media Parties' Application to Intervene.

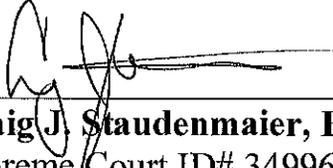
WHEREFORE, PA MEDIA GROUP, WITF, INC., and HEARST PROPERTIES INC., d/b/a WGAL-TV, respectfully move this Court for the entry of an Order granting its Application to Intervene in this proceeding for the purposes of responding to and opposing the Application of Impact Harrisburg for Declaratory Relief and filing its own Cross-Application for Declaratory Relief that

Impact Harrisburg is an “agency” under the Pennsylvania Sunshine Act, 65 Pa.

C.S.A. §701 et seq.

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: _____


Craig J. Staudenmaier, Esquire

Supreme Court ID# 34996

Joshua D. Bonn, Esquire

Supreme Court ID#93967

Nathaniel J. Flandreau, Esquire

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Counsel for PA MEDIA GROUP, WITF,
INC., and HEARST PROPERTIES INC.,
d/b/a WGAL-TV

VERIFICATION

I, CATE BARRON, Vice President of Content/PA Media Group, am authorized to make this verification on behalf of Pa Media Group, and do make the following statement subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsifications to authority, and do state that as Vice President of Content/PA Media Group, the facts set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information and belief.

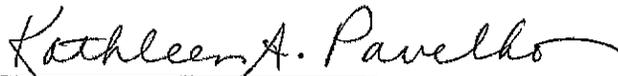


Cate Barron, Vice President of Content/PA Media Group

Date: March 9, 2016

VERIFICATION

I, KATHLEEN A. PAVELKO, President and CEO of WITF, INC., am authorized to make this verification on behalf of WITF, INC., and do make the following statement subject to penalties of 18 Pa.C.S. 4904, relating to unsworn falsifications to authority, and do state that as President and CEO of WITF, Inc., the facts set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information and belief.

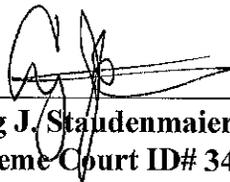


Kathleen A. Pavelko, President and CEO of WITF, INC.

Date: March 10, 2016

VERIFICATION

I, **Craig J. Staudenmaier, Esquire**, a member of the firm of Nauman, Smith, Shissler & Hall, LLP, attorneys for HEARST PROPERTIES INC., D/B/A WGAL-TV, in the foregoing proceeding, make this verification in behalf of HEARST PROPERTIES INC., d/b/a WGAL-TV as its verification cannot be obtained within the time allowed for the filing of this pleading and making the following statement subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities, and do state that as an attorney for HEARST PROPERTIES INC., D/B/A WGAL-TV, I am authorized to make this Verification on behalf of HEARST PROPERTIES INC., D/B/A WGAL-TV, and do state that the facts set forth in the foregoing Application for Leave to Intervene are true and correct to the best of my knowledge, information and belief.



Craig J. Staudenmaier, Esquire
Supreme Court ID# 34996

Date: March 10, 2016

PROOF OF SERVICE

I, CRAIG J. STAUDENMAIER, hereby certify that I am this day serving the foregoing document upon the persons below via first class mail, which service satisfies the requirements of Pa. R.A.P. 121:

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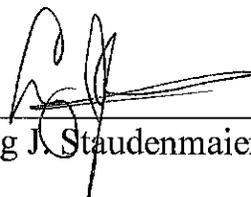
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Craig J. Staudenmaier, Esquire

Date: March 10, 2016

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Attorneys At Law

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Craig J. Staudenmaier
E-mail: cjstaud@nssh.com
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January 22, 2016

Neil Grover, Esquire
Solicitor, City of Harrisburg
10 North Second Street, Suite 402
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RE: Impact Harrisburg and Sunshine Act Issues

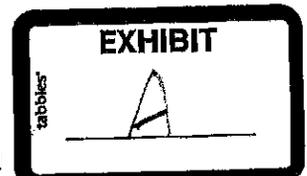
Dear Mr. Grover:

I represent PA Media Group and its print and online properties, The Patriot News and PennLive. It is my understanding that you are currently the Chair of the Governing Board of Impact Harrisburg. It is my further understanding that the meetings of the Board have not been and are not scheduled to be open to the public pursuant to the provisions of 65 Pa.C.S.A. § 701 *et seq.*, commonly referred to as The Sunshine Act. Through discussions with my client and its reporters that have addressed this issue with you and other members of the Board, I am advised that the Board does not believe that it is subject to the open meeting provisions of the Act as Impact Harrisburg is a 501(c)(3) organization and the belief that it does not fit the definition of "agency" under the Act.

I have reviewed various documents, including the Harrisburg Strong Plan, minutes of your past meetings, the Municipal Financial Recovery Act and various Orders of the Commonwealth Court throughout the receivership proceedings which began back in late 2011. Based upon that review, I am writing to you as Board Chair to request that the Board reconsider its position, and that it immediately begin to hold its meetings in public, and that it comply with the notice and other applicable provisions of the Sunshine Act. I have summarized below my analysis which leads to this conclusion and hope that it will convince the Board of the correctness of this position before further proceedings occur outside of public view.

As you are probably aware, the origins of the Sunshine Act arise from the post-Watergate era. The Act in Pennsylvania and similar ones throughout the country were meant to cast light on the "deliberations, official action and votes of public bodies to ensure that the public had notice of meetings where such action would occur and a chance to personally view government in action." This overriding principle is set forth in the Act's statement of purpose which provides:

The General Assembly hereby declares that it be the public policy of this Commonwealth to ensure the right of its citizens to have notice



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of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this Chapter. 65 Pa.C.S.A. § 702(b).

The General Assembly further announced that allowing the public to attend meetings was “vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government.” *Id.*, at § 702(a). Generally speaking, the Act applies to “agencies.”

The definition of agency is broad. Within the definition, the following language appears:

The body, and all committees thereof, authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the Executive Branch . . . , any board, council, authority or commission of the Commonwealth or any political subdivision of the Commonwealth or any State, municipal, township or school authority . . . **or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose a performance of an essential government function and through the joint action of its members exercises governmental authority and takes official action.** (emphasis supplied) 65 Pa.C.S.A. § 703.

A careful analysis of how Impact Harrisburg came into existence reveals that it appears to fit the definition of a “similar organization created by or pursuant to a statute . . .” Even entities which do not appear to be “typical” government bodies have been found to be an agency under the Act and subject to its provisions.

For example, the Commonwealth Court has held that “empowerment teams” of distressed school districts created pursuant to the provisions of the Education Empowerment Act were found to be *de facto* school boards or, at a minimum, committees of the school district subject to having their meetings held in public session pursuant to the Sunshine Act. Patriot News Co. v. Empowerment Team of Harrisburg School District, 763 A.2d 539 (Pa.Cmwth. 2000).

The Court found that the team’s statutory ability to make recommendations, create policy, establish curriculum and related functions rendered it an agency under the Act subject to its provisions. In accord, see Hacker v. Colonial League, 2001 WL 34013625 (Lehigh 2001). One of the key factors in the Court’s decision in the Empowerment Team cases was that the teams were

Neil Grover, Esquire
Solicitor, City of Harrisburg
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created by statute and wielded the ability to make policy decisions and recommendations and take other official action.

An analogous situation exists with regard to the Board here. The existence of Impact Harrisburg traces itself back to the City's petition to the Commonwealth Court for the appointment of a receiver pursuant to Act 47, commonly known as the Municipal Financial Recovery Act ("MFRA"), 53 P.S. § 11701.101, *et seq.*, on November 18, 2011. The filing of that Petition resulted in the entry of an initial Order on December 2, 2011, appointing a receiver under the MFRA. A detailed history of the further proceedings is not required, however, of particular significance is Judge Leadbetter's Order entered in the proceeding on September 23, 2013. In the Judge's Order, and in particular paragraph 11, a reference is made to the "second critical component" of the City's recovery plan (Harrisburg Strong Plan) being the closing and funding of the 'Parking Transaction' which was held to provide essential funding to the City for, among other things, 'infrastructure improvements, [and] economic development.'"

The Court confirmed the Harrisburg Strong Plan pursuant to 53 P.S. § 11701.703(e). As part of that approval, the Court approved the Parking Transaction and "the distribution of proceeds resulting from such parking transaction pursuant to the terms of the Plan."

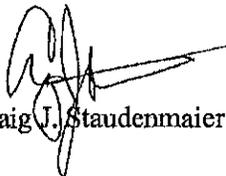
Referring to the Harrisburg Strong Plan as modified through November 25, 2015 (which can be found on both the City and DCED's web sites) as part of the Parking Transaction, a task force was created to create a structure to oversee and administer the \$12.3 million of taxpayer money that was set aside as part of the Parking Transaction. The two uses of these funds were to be improvement of infrastructure in the City and to "incentivize economic development opportunities." The task force eventually recommended the creation of a single non-profit to administer this money. The Coordinator submitted this proposal to the Commonwealth Court for approval and on November 25, 2014, the Court granted the Coordinator's request to approve this proposal and action plan for this entity to oversee the aforesaid funds. That entity, known as "Impact Harrisburg," is "to promote economic development and infrastructure improvements." Harrisburg Strong Plan, page 71, as modified 11/25/15, Order of November 25, 2014. Referring to the MFRA again, in § 704, the effective confirmation of a recovery plan or any modification thereto imposes upon the elected and appointed officials of the City a mandatory duty to undertake the acts set forth in the recovery plan. It further prohibits any interference by elected or appointed officials. In short, the creation and Court approval of the Harrisburg Strong Plan and, as part of that Plan, Impact Harrisburg, are all directly tied to the authority for same provided in statutory provisions found within the MFRA. Furthermore, under the express provisions of the MFRA, the Court has approved the plan and has specifically approved the creation of Impact Harrisburg as set forth above. Thus, Impact Harrisburg, exists as a "similar organization created pursuant to a statute."

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Solicitor, City of Harrisburg
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By the very terms of the Plan, Impact Harrisburg's two principal functions are to help fund infrastructure improvements in the City and promote economic development. These are clearly essential government functions. Thus, Impact Harrisburg is an agency as defined under the Sunshine Act as it is created by or pursuant to statute and its stated function is to make determinations of the expenditure of public funds for two essential government functions. Thus, it is required to comply with the notice, public access and related provisions of the Sunshine Act.

I believe the above analysis will convince you and the Board the correctness of the position asserted. We would, therefore, anticipate that the Board would open its next meeting and any subsequent meetings to the public and further comply with the advance notice and other related provisions of the Act. As City Solicitor, I am certain that you are aware of the penalty provisions under the Act contained in §§ 714 and 714.1. Please advise within seven business days whether the Board will be opening its future meetings. Thank you for your prompt consideration of the above.

Sincerely yours,



Craig J. Staudenmaier

CJS/jc

cc: C. Barron
M. Feeley

Nauman Smith

Attorneys At Law

Please Reply to:
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Craig J. Staudenmaier
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Telephone Extension 22

February 16, 2016

**Via Electronic Mail
Confirmed via U.S. Mail**

Neil Grover, Esquire
Solicitor, City of Harrisburg
10 North Second Street, Suite 402
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RE: Impact Harrisburg and Sunshine Act Issues

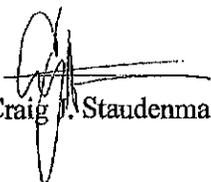
Dear Mr. Grover:

As you know from my previous letter of January 22, I represent PA Media Group. I had corresponded with you at that time as the Chair of the Governing Board of Impact Harrisburg regarding my client's concerns that the meetings of the Board were not being held in public under the provisions of the Sunshine Act, 65 Pa.C.S.A. § 701 *et seq.* A copy of my January 22, 2016, letter is enclosed.

We spoke near the end of January, after you had received the letter, and you indicated that you would be addressing the letter at the Board's next meeting on February 2. I am assuming that the Board met as scheduled.

Two weeks have now passed since the Board's meeting, and I have not heard from you nor anyone else on the Board's behalf concerning the issues raised in my earlier letter. My client has asked that I contact you one final time as Chair of the Board to address these issues prior to considering what other actions it may need to take to address those concerns. Therefore, please respond to me on or before the close of business on Friday, February 19 concerning whether or not the Board will hold its future meetings in public. I look forward to speaking with you concerning this important subject.

Sincerely yours,


Craig J. Staudenmaier

CJS/jc
Enclosure



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