

**[J-69-2012] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

HEARST TELEVISION INC., D/B/A	:	No. 112 MAP 2011
WGAL-TV AND DANIEL O'DONNELL,	:	
	:	
Appellants	:	Appeal from the order of Commonwealth
	:	Court at No. 95 CD 2010 dated
	:	11-16-2010 affirming the order of the
	:	Cumberland County Court of Common
v.	:	Pleas, Civil Division, at No. 09-5832 civil
	:	term dated 12/23/2009.
	:	
MICHAEL L. NORRIS, IN HIS OFFICIAL	:	ARGUED: May 9, 2012
CAPACITY AS CORONER OF	:	
CUMBERLAND COUNTY, AND THE	:	
PENNSYLVANIA OFFICE OF OPEN	:	
RECORDS,	:	
	:	
Appellees	:	

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: October 17, 2012

I respectfully dissent from the majority's finding there is no conflict between the sections of the Coroner's Act and the Right to Know Law at issue here, and from its conclusion the requested record in this case is not exempt from disclosure under the RTKL. I would hold § 1236.1(c) of the Coroner's Act gives the coroner discretion concerning whether to release a written report regarding cause and manner of death prior to the statutorily-mandated time period in § 1251, and therefore conflicts with § 708(b)(20) of the RTKL, which provides cause and manner of death reports are not exempt from the Act's access requirements. Because of this conflict, the Coroner's Act provisions control, and the requested record is exempt from disclosure under the RTKL. See 65

P.S. § 67.3101.1 (stating if RTKL's provisions regarding access to records conflict with any other federal or state law, RTKL's provisions shall not apply).

The Coroner's Act provides two means of obtaining a report concerning the cause and manner of death. Under § 1251, a coroner is required to deposit all official records from the preceding year with the prothonotary by January 30 of the following year for inspection by any interested persons. 16 P.S. § 1251. Under § 1236.1(a), compliance with "[r]equests for examinations or other professional services [made] by other counties or persons," apart from the inspection of records permitted under § 1251, is left to a coroner's discretion. Id., § 1236.1(a). Section 1236.1(c) permits a coroner to charge a fee for such "other reports and documents requested by nongovernmental agencies." Id., § 1236.1(c).

Unlike the majority, I do not read § 1236.1(a)'s reference to discretion as solely applicable to that subsection; reading § 1236.1 as a whole, I would conclude subsection (a) bestows the discretion, and subsection (c) permits a coroner to charge a fee for his discretionary release of reports prior to the time mandated in § 1251. A majority of this Court concluded as much in Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (Pa. 2009). In Penn Jersey, the issue was whether a coroner's autopsy report is an "official" record within the meaning of § 1251 and thus subject to that section's mandatory annual disclosure requirement. Id., at 637. In holding such a report constitutes an official record under the statute, we rejected the notion there was a conflict between § 1251, which allows access to autopsy reports free of charge if they are deemed "official" records, and § 1236.1(c), which allows a coroner to charge for autopsy reports. We noted § 1251 bears a time requirement, and observed § 1236.1(c) does not contain such a requirement. Accordingly, we concluded, "Section 1236.1 merely provides a rapid means of procuring an autopsy report for those who do not wish to wait until after the end

of the year, and who are also willing to pay the charges associated with procuring it.” Penn Jersey, at 637 (emphasis in original).¹

Although the analysis in Penn Jersey was focused on the “official” nature of autopsy reports and did not involve the RTKL, the conclusion that §§ 1251 and 1236.1 do not conflict is instructive: the majority interpreted § 1236.1 as a faster means of obtaining the same information mandated to be disclosed under § 1251. The fact that “discretion” was articulated in subsection (a) but not subsection (c) was not determinative; the Court read the section in its entirety and concluded it gives a coroner discretion to release information sooner than the annual disclosure, coupled with the ability to charge a fee for such rapid disclosure.

Thus, I agree with the Commonwealth Court’s interpretation of Penn Jersey, and with its conclusion that immediate access under the RTKL would conflict with a coroner’s discretion in § 1236.1(c) of the Coroner’s Act. See Hearst Television, Inc. v. Norris, 8 A.3d 420, 427 (Pa. Cmwlth. 2010) (“[I]t would be inconsistent with Section 1236.1 of the Coroner’s Act, which gives a coroner discretion regarding whether to release cause of death information before being required to do so under the Coroner’s Act, to require a coroner to immediately release that same information upon request under the RTKL.”).

Having found a conflict between the RTKL and §§ 1236.1 and 1251 of the Coroner’s Act, I would further conclude this conflict is sufficient to trigger the RTKL’s conflict provision. Requester contends the Commonwealth Court applied a new lenient standard of “inconsistency” instead of the “irreconcilability” required by the Statutory Construction Act. See 1 Pa.C.S. § 1933 (when general provision in statute “conflicts with

¹ This author filed a concurring and dissenting opinion, agreeing with the conclusion that §§ 1251 and 1236.1 do not conflict, but disagreeing that all autopsy reports are part of a coroner’s official records requiring annual filing and disclosure. Penn Jersey, at 638-39 (Eakin, J., concurring and dissenting).

a special provision in the same or another statute, the two shall be construed, if possible, so effect may be given to both; if conflict between two provisions is irreconcilable, the special provisions shall prevail"). Here, the Coroner's Act only requires disclosure of cause and manner of death reports by a coroner once a year; earlier disclosure is discretionary with the coroner. The provision of the RTKL requiring immediate disclosure of such reports upon request is thus not reconcilable with the Coroner's Act. Accordingly, the Commonwealth Court did not create a new, more lenient standard; it properly concluded the two provisions were contradictory, and as such, the RTKL does not apply.

For these reasons, I would affirm the decision of the Commonwealth Court.