

No. 2004-170

AN ACT

HB 2798

Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," further providing for eligibility for elective borough office, for general powers of mayor and for borough powers to convey land.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 801 of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, amended June 25, 2001 (P.L.651, No.56), is amended to read:

Section 801. Electors Only to be Eligible; Incompatibility.—[Registered] (a) *Except as provided in subsection (b), registered* electors of the borough only shall be eligible to elective borough offices. All elected borough officers shall reside in the borough from which elected and shall have resided in the borough continuously for at least one year immediately before their election. A school director shall not be eligible to an elective borough office. No individual shall at the same time hold more than one elective borough office.

(b) A borough with a population of less than one hundred fifty, incorporated on or after January 1, 1964, may permit individuals that have not resided in the borough continuously for at least one year immediately before the election to be eligible to hold office.

Section 2. Section 1028 of the act, amended July 10, 1980 (P.L.425, No.100), is amended to read:

Section 1028. General Powers of Mayor.—(a) The mayor shall have power:

(1) To administer oaths and affirmations in matters pertaining to borough affairs.

(b) In addition to the power granted to mayors by Part V of Title 35 of the Pennsylvania Consolidated Statutes (relating to emergency management services) and in order to enable him effectually to preserve the public peace within the borough, all the powers which are devolved by the laws of this Commonwealth upon sheriffs, to prevent and suppress mobs, riots and unlawful and tumultuous assemblies, are hereby conferred upon the mayor. In the event that a state of emergency exists, a mayor shall have the authority to request aid and assistance from law enforcement officers and agencies from a neighboring municipality. In response to a request of a mayor made in accordance with this subsection, a municipal police officer shall, within the borough from which the request was made, have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or

performing those functions within the territorial limits of his or her primary jurisdiction, subject to the limitations and conditions set forth in 42 Pa.C.S. § 8953(b) through (e) (relating to Statewide municipal police jurisdiction). When the mayor considers that a state of emergency exists, he may issue his proclamation, which shall be in writing and the contents of which shall be made available to all news media, declaring a state of emergency for a period not to exceed seven days, unless sooner rescinded, modified or ratified or extended by resolution of council. In his proclamation he may prohibit, for all or any part of the borough:

(1) Any person being on the public streets or in the public parks or at any other public place during the hours declared by him to be a period of curfew.

(2) The entry or departure of persons into or from any restricted area.

(3) The sale, purchase or dispensing of any commodities or goods, as designated by him.

(4) The transportation, possession or use of gasoline, kerosene or other combustible, flammable or explosive liquids or materials, except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use.

(5) Any other such activities as he reasonably believes should be prohibited to help preserve life, health, property or the public peace.

The proclamation shall describe any restrictive area with particularity and shall specify the hours during such restrictions are to be in effect.

Any person violating such proclamation of emergency shall be guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine not to exceed three hundred dollars (\$300) and costs or to undergo imprisonment not to exceed thirty days.

Section 3. Section 1201 of the act, amended December 14, 1989 (P.L.626, No.73) and May 7, 1998 (P.L.347, No.54), is amended to read:

Section 1201. General Powers.—A borough may:

(1) Have succession perpetually by its corporate name.

(2) Sue and be sued, and complain and defend in the courts of the Commonwealth.

(3) Make and use a common seal, and alter the same at pleasure.

(4) Purchase, acquire by gift, or otherwise, hold, lease, let and convey, by sale or lease, such real and personal property as shall be deemed to be to the best interest of the borough, subject to the following restrictions, limitations or exceptions:

(i) No real estate owned by the borough shall be sold for a consideration in excess of fifteen hundred dollars (\$1500), except to the highest bidder after due notice by advertisement for bids or advertisement of a public auction in one newspaper of general circulation in the borough. Such advertisement shall be published once not less than ten days prior to the date fixed for the opening of bids or public auction, and such date for opening bids or public auction shall be announced in such advertisement. The award of contracts shall be made only by public announcement at a regular or

special meeting of council or at the public auction. All bids shall be accepted on the condition that payment of the purchase price in full shall be made within sixty days of the acceptance of bids. The borough council shall have the authority to reject all bids if such bids are deemed to be less than the fair market value of the real property. In the case of a public auction, the borough council may establish a minimum bid based on the fair market value of the real property. Real estate owned by a borough may be sold at a consideration of fifteen hundred dollars (\$1500) or less without advertisement or competitive bidding only after council estimates the value thereof upon receipt of an appraisal by a qualified real estate appraiser.

(ii) Except as otherwise hereinafter provided in the case of personal property of an estimated fair market value of less than one thousand dollars (\$1,000), no borough personal property shall be disposed of, by sale or otherwise, except upon approval of council, by ordinance or resolution. In cases where council shall approve a sale of such property, it shall estimate the fair market value of the entire lot to be disposed of. If council shall estimate the fair market value to be one thousand dollars (\$1,000) or more, the entire lot shall be advertised for sale once, in at least one newspaper of general circulation in the borough, not less than ten days prior to the date fixed for the opening of bids or public auction, and such date of opening of bids or public auction, shall be announced in such advertisement, and sale of the property so advertised shall be made to the best responsible bidder. Council may reject any bids received if the bids are believed to be less than the fair market value of the property. Council shall, by resolution, adopt a procedure for the sale of surplus personal property, either individual items or lots of items, of an estimated fair market value of less than one thousand dollars (\$1,000) and the approval of council shall not be required for any individual sale that shall be made in conformity to such procedure.

(iii) The provisions of this clause shall not be mandatory where borough property is to be traded in or exchanged for new borough property.

(iv) The provisions of this clause requiring advertising for bids or sale at public auction and sale to the highest bidder shall not apply where borough real or personal property is to be sold to:

(A) a county, city, borough, town, township, institution district, school district, volunteer fire company, volunteer ambulance service or volunteer rescue squad located within the borough;

(B) a municipal authority pursuant to the Municipality Authorities Act of 1945;

(C) a non-profit corporation engaged in community development or reuse only upon entering into a written agreement with the non-profit corporation that requires the property to be used for industrial, commercial or affordable housing purposes. This exemption shall not apply to property on which existing governmental functions are conducted;

(D) where real property is to be sold to a person for his exclusive use in an industrial development program;

(E) where real property is to be sold to a non-profit corporation organized as a public library for its exclusive use as a library;

(F) where real property is to be sold to a non-profit medical service corporation as authorized by clause (76) of section 1202;

(G) where real property is to be sold to a non-profit housing corporation as authorized by clause (77) of section 1202; [or]

(H) where real property is to be sold to the Commonwealth or to the Federal Government[.]; or

(I) where real property is to be sold to a non-profit museum or historical society for its exclusive use as a non-profit museum or historical society.

(v) When real property is to be sold to a non-profit corporation organized as a public library for its exclusive use as a library or to a non-profit medical service corporation or to a non-profit housing corporation, council may elect to accept such nominal consideration for such sale as it shall deem appropriate.

(vi) Real property sold pursuant to this clause to a volunteer fire company, volunteer ambulance service or volunteer rescue squad, non-profit medical service corporation or to a non-profit housing corporation shall be subject to the condition that when the property is not used for the purposes of the company, service, squad or the corporation the property shall revert to the borough.

(vii) The exemption granted under subclause (iv)(C) shall not apply to property owned and operated by the borough or subcontracted or operated on the behalf of the borough in order to conduct existing governmental functions.

(5) To invest in or purchase bonds of any municipal authority or parking authority created solely by the borough, for the purpose either of investment or of possible retirement of such bonds and acquisition of authority projects at an earlier date than originally contemplated, using for the purpose either surplus funds of the borough or money appropriated in the annual budget for the purpose.

Section 4. This act shall take effect as follows:

(1) The amendment of sections 1028 and 1201 of the act shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 29th day of November, A.D. 2004.

EDWARD G. RENDELL