

ognizes that if young Robert is not returned to Maryland under our order, there may be a jurisdictional problem in a Maryland proceeding. It is stated that the father would submit to Maryland jurisdiction. However, it must be apparent that if we do not return the child to his mother, she will have to initiate proceedings in Maryland when, from the view of the Court, since she had custody of the child under an agreement of the parties and the father had what might be called visitation rights, if these arrangements are to be changed it should be by his taking appropriate action.

The problem is not as complex as it may appear. We will simply retain jurisdiction for the purpose of ordering the father to return the child to his mother, thus annulling our earlier order giving him authority to keep the child. When that act is completed, we will divest ourselves of jurisdiction. This is an orderly process which carries out the intent of the Uniform Child Custody Jurisdiction Act. This is not a new situation; we have done it in other similar cases.

ORDER OF COURT

May 8, 1980, it is ordered that Robert A. Queen, III be returned by his father, Robert A. Queen, Jr., to the custody of his mother, Ellen Darlene Queen, on Sunday, May 11, 1980, at 2:00 o'clock P.M., by the mother coming to the home of Robert A. Queen, Jr. to pick up the child. When this transfer of custody is completed, thus nullifying the provisions of our order of March 31, 1980 stating that pending disposition of this matter, custody of the child shall be with the father, we decline to retain jurisdiction in the case for the reason that the state of Maryland is a more appropriate forum. The proceedings with regard to the custody of Robert A. Queen, III are dismissed, the costs to be paid by Robert A. Queen, Jr.

APPEAL OF R. EUGÈNE SNIDER FROM THE AUDITORS' REPORT OF ST. THOMAS TOWNSHIP, C.P.O.D., Franklin County Branch

Second Class Township - Street Lighting - Federal Revenue Sharing Funds

1. The use of Federal Revenue Sharing Funds for street light purposes is a proper and lawful use under 53 P.S. Sec. 65702.

Edward I. Steckel, Esq., Solicitor for St. Thomas Township.

Frederic G. Antoun, Jr., Esq., Counsel for Appellant.

OPINION AND ORDER

KELLER, J., April 29, 1980:

On April 25, 1979, R. Eugene Snider, appellant, filed his appeal objecting and excepting to the Auditors' of St. Thomas Township report filed with the Clerk of the Courts of Franklin County, Pennsylvania on March 12, 1979 on the grounds that:

(a) The audit does not indicate that any assessment for lighting was made as required by the Second Class Township Code, Act of May 1, 1933, P.L. 103 Art. VII, Sec. 702, 53 P.S. 65702, as amended.

(b) The audit does not indicate the collection of any assessment for the expense and maintenance of street or yard lights furnished by the Township to private property owners.

(c) The auditors failed to surcharge the Township supervisors for the loss resulting to the Township from their failure to assess and/or failure to collect assessments for the maintenance of street or yard lights furnished by the Township to private property owners.

(d) The cost of street lighting provided to private property owners was improperly paid from Township general funds or revenue sharing funds.

(e) The auditors failed to surcharge the St. Thomas Township Supervisors for the loss incurred when the Township bore the cost of said lighting rather than assessing the cost against private property owners as mandated by the Second Class Township Code.

The appellant filed his Recognizance in the amount of \$500.00 to prosecute his appeal with effect, and to pay all costs accruing in the event he fails to obtain a final decision more favorable to the St. Thomas Township than that awarded by the Auditors.

On May 15, 1979 the Board of Supervisors of St. Thomas Township filed its answer, and in response to the appellant's exceptions alleged:

(a) No assessment is required in order to provide street lighting by the Second Class Township Code. Street lighting may be paid by township funds without the requirement of an assessment.

(b) No street or yard lights were furnished by the Township to private property owners. Street lights have been provided by the Township at various intersections of public roads and in residential areas of the Township at Township expense as a matter of public safety. No special assessment was imposed on the taxpayers of the Township, since such street lighting and lighting of intersections was provided uniformly throughout the Township.

(c) No loss occurred to the Township as alleged in Paragraph 4 (c) of the appeal, since the lighting of intersections and the lighting of streets in residential areas is a proper purpose for which Township funds may be expended.

(d) The cost of lighting intersections and the lighting of streets in residential areas is a proper purpose for which Township funds, including general revenue sharing funds, may be expended.

(e) Since said lighting is a proper expense as aforesaid, a surcharge by the auditors would have been improper. The Second Class Township Code does not mandate an assessment as being the only method by which said lighting may be paid.

On November 19, 1979 counsel for the appellant took the depositions of Robert M. Pittman and John D. Malone, Auditors of St. Thomas Township, Robert L. Andrews, Chairman of the Board of Supervisors of the Township, and Nathan Lehman, Secretary-Treasurer of the Township. Counsel for the appellant and the Township Supervisors stipulated to the following facts:

2. St. Thomas Township is a township of the second class.
3. St. Thomas Township provides street lighting in certain areas of the Township, as indicated by Exhibit A admitted at depositions in this matter.
4. The Township does not levy any tax for street lights nor assess or collect an assessment for street lighting.
5. No petition of residents for street lights has been presented to St. Thomas Township.

6. The decision to install street lights at certain locations was made by the St. Thomas Township Supervisors.

7. The cost of street lighting is paid from federal revenue sharing funds allocated for any permitted general fund expenditure.

8. Any cost of street lights in excess of federal revenue sharing funds must be paid from the Township's general tax revenues.

The matter was listed for argument at the March 6, 1980 Argument Court with counsel agreeing that the Court would reach its decision on the question of law based upon the undisputed and uncontradicted facts as set forth in the depositions and in the Stipulation of Facts above. The matter is ripe for disposition.

FINDINGS OF FACT

1. In March 1972, the then Board of Supervisors of St. Thomas Township established a program for the placement of streets lights in the township any place having four or five or more houses grouped together, at dangerous intersections, curves, blind spots on the highway and in villages.

2. Under the electrification program the Supervisors' contract with the electric company to install poles and lights at no cost to the Township, and the Township is billed for the electricity used.

3. Three Hundred Fifty-three (353) street lights have been installed to November 19, 1979 in the Township.

4. The Supervisors of the Township have executed various contracts with the electric company over the years for terms of from five to ten years.

5. The Township never becomes the owner of the light poles.

6. The 353 street lights serve 1662 housing units for an estimated 5,235 people.

7. The estimated population of St. Thomas Township as of 1980 is 6,000 people, so 87.25% of the population is served by the installed lights.

8. The street lights are located along the edge of the

highway right-of-way, and designed to provide maximum lighting on the highway and no lighting to the yards of private property owners.

9. No petition by residents for the installation of street lights has been presented to the Board of Supervisors of St. Thomas Township.

10. The recognized procedure in St. Thomas Township for securing street lighting is for property owners to make a request for the installation of a light. The Township Supervisors then review the request to determine whether it meets the standards established in 1972, determine whether the electric company will install the pole and light without charge to the Township.

11. The only request for a light for a private driveway or private lane made since the adoption of the 1972 Standards was made by the appellant, and it was refused.

12. The only other request refused by the Supervisors was a request to install a street light on a highway curve, where the Township would have been called upon to bear the costs of several hundred dollars for its installation.

13. The cost of providing street lighting for St. Thomas Township in 1978 was \$22,975.00, and was paid from federal revenue sharing funds. The use of revenue sharing funds for the cost of street lighting is a permitted usage of those funds.

14. Federal revenue sharing funds have been used regularly to pay the cost of street lighting.

15. If the cost of street lighting in the Township would exceed federal revenue sharing funds that excess cost would be paid from the Township's general funds.

16. The appellant is a taxpayer, property owner and registered elector of the Township.

17. St. Thomas Township is a township of the second class.

18. The Township does not levy any tax for street lights nor assess or collect any assessment for street lighting.

19. The Board of Supervisors of St. Thomas Township acted in reliance upon the advice of their Solicitor in paying for street lights as above set forth.

DISCUSSION

At argument on this matter counsel for the appellant preliminarily advised the Court that the appellant conceded that the Supervisors of St. Thomas Township had no intent to violate the law, that the applicable law was in a state of confusion, and that the Township's lighting policy had been in existence for a long time; and therefore, the appellant did not seek to surcharge the Supervisors jointly or severally. Counsel advised the Court that his client's position was that the only fair way for the Township to pay for street lights was via an assessment upon those who benefit from such street lighting.

Preliminarily, we would observe that the appellant's position that he does not seek to surcharge the Township Supervisors is most curious, for as we visualize the proceeding he initiated, and his complaints in paragraphs 4 (c) and (e), the only relief which could be granted if his appeal is successful would be by way of a surcharge. This conclusion is predicated upon the theory that the appellant has raised the contention that township funds were improperly expended and should be replaced for the benefit of the entire township.

The contention of the appellant is that the Township Code authorizes the providing of street lighting, but requires that its cost be defrayed by assessing the property owners who benefit from such lighting.

The Act of 1933, May 1, P.L. 103, Art. VII, Sec. 702, as amended, 53 P.S. 65702 provides:

"The corporate powers of townships of the second class shall be exercised by the township supervisors. Where no specific authority is given for the expenditures incident to the exercise of any power hereinafter conferred, or where no specific fund is designated from which such expenditures shall be made, appropriations for such expenditures shall be made only from the general township fund. In addition to the duties imposed upon them by section 516 hereof, they shall have power—

"To light and illuminate the highways, roads, and other public places of the township with electric light, gas, or other illuminating medium, and to provide for defraying the cost, charges and expenses thereof; and, for such purposes, to enter into contracts or agreements with any person, co-partnership, association, or corporation, for a period not exceeding ten years, for the purpose of securing and maintaining a supply of light.

LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT OF
FRANKLIN COUNTY, PENNSYLVANIA —
ORPHANS' 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 Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 3, 1980.

ANTHONY First and final account, statement of proposed distribution and notice to the creditors of Mabel Mabel Wenger, executrix of the last will and testament of Mark W. Anthony, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

GRAHAM First and final account, statement of proposed distribution and notice to the creditors of The Valley Bank and Trust Company, executor of the estate of Sally L. Graham, a/k/a Sally R. Graham, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

HADE First and final account, statement of proposed distribution and notice to the creditors of Rudolf M. Wertime, executor of the estate of Naomi K. Hade, late of the Borough of Greencastle, Franklin County, Pennsylvania, deceased.

HODGES First and final account, statement of proposed distribution and notice to the creditors of Z. C. Hodges, administrator of the estate of David M. Hodges, late of Greene Township, Franklin County, Pennsylvania, deceased.

HAZLETT First and final account, statement of proposed distribution and notice to the creditors of Joseph E. Adams, executor of the last will and testament of Arlene A. Hazlett, late of The Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

MYERS First and final account, statement of proposed distribution and notice to the creditors of William L. Myers, executor under the last will and testament of William Ray Myers, a/k/a W. Ray Myers, late of Greene Township, Franklin County, Pennsylvania, deceased.

POMEROY First and final account, statement of proposed distribution and notice to the creditors of The Chambersburg Trust Company, executor of the last will and testament of Julia E. Pomeroy, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

THARP First and final account, statement of proposed distribution and notice to the creditors of Percy D. Monn, executor of the estate of Alta M. Tharp, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE
Clerk of Orphans' Court
Franklin County, Pennsylvania

(6-6, 6-13, 6-20, 6-27)

LEGAL NOTICES, cont.

NOTICE OF WINDING-UP PROCEEDING
D. M. EVANS, INCORPORATED

Notice is hereby given that D. M. Evans, Incorporated, a Pennsylvania corporation with principal offices located at 474 Grant Street, Chambersburg, Pennsylvania, has filed a Certificate of Election to Dissolve and is winding-up its business. All communication or inquiry should be submitted to:

WELTON J. FISCHER
550 Cleveland Avenue
Chambersburg, Pennsylvania 17201

Dated: June 9, 1980
(6-20, 6-27)

"On the petition of the owners of a majority of the lineal feet frontage along any road, highway, or portion thereof within the township, to enter into contract with electric, gas, or other lighting companies to light and illuminate said roads and highways and other public places with electric light, gas light, or other illuminant.

"The township supervisors shall annually assess or cause to be assessed the cost and expense of the maintenance of said lights by an equal assessment on all property within two hundred and fifty (250) feet of such lighting in proportion to the number of feet the same fronts on the street or highway or portion thereof to be lighted. The supervisors may provide for an equitable reduction from the frontage of lots at intersections or where, from the peculiar or pointed shape of lots, an assessment of the full frontage would be inequitable. No such assessment shall be made against any farm land, but vacant lots between built-up sections, whether tilled or untilled, shall not be deemed to be farm lands: Provided, however, That the assessment per front foot against vacant lots shall be only twenty-five per centum of the assessment per foot front against property with improvements thereon. All such assessments for street lighting shall be filed with the township tax collector, who shall give thirty days written or printed notice that the assessments are due and payable, stating the due date to each party assessed, either by service on the owner of the property, or by mailing such notice to the owner at his last known post office address. The tax collector shall be entitled to the same commission for the collection of such assessments as he is entitled to by law for the collection of the township road tax. If the assessments, or any of them, remain unpaid at the expiration of not exceeding ninety days, the exact time to be fixed by the township supervisors, they shall be placed in the hands of the township solicitor for collection. The solicitor shall collect the same, together with five per centum as attorney's commission, and interest, from the date such assessments were due, by a municipal claim filed against the property of the delinquent owner in like manner as municipal claims are by law filed and collected. Where an owner has two or more lots against which there is an assessment for the same year, all such lots shall be embraced in one claim. All assessments, when collected, shall be paid over to the township treasurer, who shall receive and shall keep the same in a separate account, and pay out the same only upon orders signed by the chairman of the township supervisors, attested by the secretary. The tax collector and the treasurer shall make a report to the auditors of the township annually."

Section 905 of the Second Class Township Code, supra, 53 P.S. 65905 provides inter alia:

"A. The board of township supervisors may, by resolution, levy taxes upon all real property and upon all occupations, or upon real property alone, within the township made taxable for township purposes, as ascertained by the last adjusted valuation for county purposes, for the purposes and at the rates hereinafter specified. All taxes shall be collected in cash.

"1. An annual township tax, for road, bridge, and general township purposes, not later than the fourth Monday of March of each year, not exceeding fourteen mills. Where the board of supervisors, by a majority action, shall, upon due cause shown, petition the court of quarter sessions for the right to levy additional millage, the court, after such public notice as it may direct and after hearing, may order a greater rate than fourteen mills but not exceeding five additional mills, to be levied. Such annual township tax shall include all levies for road, bridge and general township purposes.

"2. Upon receipt of a petition of a majority of the owners of real estate of the township requesting it, an annual tax, not exceeding five mills, for the purpose of lighting the highways, roads and other public places in the township, in the manner provided by the general powers of this act, and of defraying the cost, charges and expenses thereof. Nothing contained herein shall require a petition of owners of real estate in any township, which is now lighting its streets and imposing taxes under this subsection for such purposes."

The appellant contends that the proper construction of Sec. 702 and 905 of the Second Class Township Code, supra, requires the Township Supervisors to assess the cost and expense of the maintenance of the lights either on a front footage basis (paragraph 4 of Sec. 702) or by the levying of an annual tax for the purpose of lighting the highways, roads and other public places in the township (Sec. 905 A.(2)); and if the funds are raised by a front footage assessment, then it must be held in a separate account. In essence, the appellant contends that the fourth paragraph of Sec. 702 applies to both the second and third paragraphs of the section, and mandate front footage assessment of those properties directly affected by the lighting in the absence of a petition by a majority of the owners of real estate requesting an annual tax for the purpose of lighting the highways, etc. (Sec. 905 A(2)). The appellant has cited no authority in support of his contention.

To adopt the position contended for by the appellant, we must ignore the second sentence of the first paragraph of Sec. 702, which provides, "Where no specific authority is given for the expenditures incident to the exercise of any power hereinafter conferred, or where no specific fund is designated from which such expenditures shall be made, appropriations from such expenditures shall be made *only from the general township fund.*"; and the clause in the second paragraph, "and to provide for defraying the cost, charges and expenses thereof."

1 Pa. C.S.A. 1921(a) provides:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

1 Pa. C.S.A. 1922 provides inter alia:

"In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

- (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.
- (2) That the General Assembly intends the entire statute to be effective and certain."

Being mindful of the goals governing statutory construction above set forth, we conclude that Sec. 702 and 905 of the Second Class Township Code established three separate and distinct procedures under which the lighting of highways, roads and other public places in second class townships may be affected, together with the distinctive method for funding such illumination. These alternatives are:

1. The Township Supervisors may on their own motion provide for such illumination and enter into contracts for periods not exceeding ten years for the purpose of securing and maintaining such illumination. This procedure creates a charge against the general township fund, and is paid from the annual tax levy of the township.

2. A majority of the owners of the lineal feet frontage along any road, highway or portion thereof may petition the township supervisors to enter into contracts with appropriate companies to light and illuminate a specific road, highway or

LEGAL NOTICES, cont.

NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for the following domestic non-profit corporation were filed in the Department of State of the Commonwealth of Pennsylvania on May 14, 1980:

1. The name of the proposed corporation is the:
**COMMUNITY EVANGELICAL
FREE CHURCH OF THE
VALLEYS**

2. The proposed corporation is to be incorporated under the provisions of Article B of the "Non-Profit Corporation Law of 1972," Act No. 271.

3. The primary purpose of the corporation is to present the gospel of Jesus Christ as set forth in the Word of God to the community. In order to effect this purpose the corporation will conduct worship services, Bible studies, fellowship activities, youth programs and activities, Christian music ministries, Christian spiritual revival services, evangelical services and any other lawful activity to implement the above purposes. The corporation shall have the power to conduct any other lawful business for which corporations 3. The primary purpose of the corporation Commonwealth of Pennsylvania Non-Profit Corporation law.

Marcus A. McKnight, III, Esquire
IRWIN, IRWIN & IRWIN
44 South Hanover Street
Carlisle, Pennsylvania 17013

(7-4)

NOTICE IS HEREBY GIVEN that Articles of Incorporation of a proposed non-profit corporation to be called "Fannetsburg Wildlife Foundation, Inc." will be filed on Tuesday, June 24, 1980, in the office of the Department of State, Corporation Bureau, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, under the provisions of the Nonprofit Corporation Law of 1972 of the Commonwealth of Pennsylvania.

The purpose or purposes for which the corporation is formed are as follows:

"For educational and scientific research, and protection of the natural resources (including particularly the habitat of fish and waterfowl in the west branch of the Conococheague Creek and the existing lake thereon near Fannetsburg, Pennsylvania) on a scientific basis."

The proposed corporation does not contemplate any pecuniary gain or profit incidental or otherwise, to its members.

William R. Davis, Jr.
of Davis and Zullinger
Suite 410
Chambersburg Trust Company Bldg.
Chambersburg, PA 17201
Attorney

(7-4)

NOTICE

Notice is hereby given that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, Department of State, in Harrisburg, Pennsylvania, on June 25, 1980, for the purpose of obtaining a Cer-

LEGAL NOTICES, cont.

tificate of Incorporation for a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, P.L. 364, as amended. The name of the corporation is KOONS A. I. INC., and the purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any and all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Robert P. Shoemaker, Esquire
237 East Main Street
Waynesboro, Pennsylvania 17268

(7-4)

public place or portion thereof. If the supervisors grant the prayer of such a petition, they are then required to annually assess or cause to be assessed the cost and expense of the maintenance of said lights by an equal assessment on all property within 250 feet of such lighting and in accordance with the other provisions of paragraph 4 of Sec. 702. Supervisors are also required to establish a separate account into which all assessments collected are required to be paid, and from which the costs of illumination are paid out.

3. A majority of the owners of all of the real estate of the township may petition the supervisors to impose an annual tax not exceeding five mills for the purpose of illuminating the highways, roads and other public places in the township. If the supervisors grant the prayer of such a petition, then they would levy an annual tax upon all of the real estate of the township to defray the costs, charges and expenses of such illumination.

The use of federal revenue sharing funds for street lighting purposes is a proper and lawful use. The application of those funds to the cost of street lighting in St. Thomas Township was in relief of the general township funds. Clearly, the Supervisors of St. Thomas Township elected to exercise their authority under Option No. 1 of the Second Class Township Code. There, therefore, was neither the right nor the duty on the part of the supervisors to collect any assessment as provided under Option No. 2, supra, or to levy a separate annual tax as provided under Option No. 3. Consequently, the Auditors of St. Thomas Township had neither the right nor the duty to impose a surcharge on the Township Supervisors as urged by the appellant.

ORDER OF COURT

NOW, this 29th day of April, 1980, the Appeal of R. Eugene Snider from the Auditors' Report of St. Thomas Township is dismissed.

Costs to be paid by the Appellant.

Exceptions granted the Appellant.

COMMONWEALTH v. BARNETT, No. 2, C.P. Fulton County Branch, No. 83 of 1978

Criminal Law - Robbery - Bodily Injury - Leave for Counsel to Withdraw - Right to New Counsel