

Judge puts plug in sale of Chester Water Authority

By Colin Ainsowrth July 6, 2019

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CHESTER — The Chester Water Authority was granted a preliminary injunction in the Delaware County Common Pleas Court this week against the City of Chester's request for proposal to gage market interest is purchasing the authority's assets.

In a July 2 order, amended on July 3, Judge James P. Bradley wrote that the city is "enjoined from alienating any assets owned by or allegedly owned by the Chester Water Authority" and "is further enjoined and prohibited from taking any legal action dissolving, or attempting to dissolve, the CWA or in any way attempting to interfere with the day-to-day operations of the CWA."

The order, which expires at 2 p.m. Aug. 2, states that any RFPs received by the city may opened, but "no further actions will be taken in conjunction with same pending a final settlement of this matter or upon further Order of Court."

According to court transcripts of the July 1 hearing made available on the CWA website, Chester City Clerk Candice Thompson estimated that six responses were received by RFP's July 1 deadline.

Attorneys from the Philadelphia-based Conrad O'Brien PC, representing CWA, filed a complaint in the Common Pleas Court on June 26 against the city of Chester and Aqua Pennsylvania Inc., alleging violations of the Pennsylvania Sunshine Act, among others, in the city's issuing of the RFP, along with the request for preliminary injunction. The Sunshine Act "requires agencies to deliberate and take official action on agency business in an open and public meeting," according to a summary from the state Office of Open Records.

The June 26 complaint and injunction request stated that "over the last two weeks, Chester and Aqua have taken drastic and illegal action to imminently force a sale of the Authority. The Court must put a stop to it." The referenced action stems from Chester City Council's approval of a resolution on June 12 to issue a request for proposal to sell "substantially all of the Water System Assets, including real and personal property, which it acquires from the Authority upon termination of the Authority as a matter of law." The CWA complaint alleged a "corrupt bargain" between Chester City and Aqua and that "Chester's supposedly public RFP is a sham, a front to give a veneer of legitimacy to Chester's pre-arranged backroom deal with Aqua."

At the conclusion of the hearing, Bradley dismissed Aqua from the case, saying the court "does not believe that the requisite elements have been satisfied with respect to Aqua as far as this particular request for preliminary objection is concerned."

In making his decision to issue the injunction, Bradley referenced the testimony of Thompson and city Mayor Thaddeus Kirkland on the financial impact of other items on the June 12 agenda, saying "when asked what was the value of the other matters on the agenda that night, they didn't know, didn't recall, but everything was basically the same, it was all important." He then estimated that if tabulating the value of the approximately 15 other agenda items, "I would suspect if you added the other ... items ... and multiplied it by 10 and then took it to the 8th power, you would (have) far less than the amount of money that we're talking about here."

"Chester very well knew that this was essentially a nuclear bomb as far as finance is concerned. We're talking about

hundreds of millions of dollars," Bradley said. "The agenda didn't even mention the Chester Water Authority." Bradley said while "in general, a municipality does have authority to dissolve a municipal authority ... it can't be done with impunity" and that the public interest must be taken into account.

Bradley referenced the conflicting testimony as to whether Kirkland informed CWA Board Chair Cynthia Leitzell on June 12 that a resolution authorizing the RFP would be voted on at that evening's city council meeting, saying "An argument was made well the Chester Water Authority knew about it and Ms. Leitzell knew about it. I think that's debatable."

He continued, "But the standard under the Sunshine Act isn't whether one particular possible party has notice. The public has to have notice," saying that in this instance the city "fell far short" of meeting Sunshine Act requirements.

The background to CWA's June 26 complaint states the agenda for the June 12 Chester City Council meeting makes no explicit reference to the authority, instead featuring "a cryptically worded pending resolution to 'Authorize to approve Request for Proposals for Valuation of Assets.'" While Thompson and Kirkland stated in their testimony at the July 1 hearing that discussion of the RFP resolution did take place at the city council's publicly advertised June 10 deliberative meeting, council does not keep minutes or recordings of discussion at its deliberative meetings.