

IN THIS ISSUE

Q&A with PA Secretary of Transportation
Leslie S. Richards..... 1

A Cautionary Right-to-Know Tale..... 2

People News 3

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 180 law offices in 86 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2018
Stradley Ronon Stevens & Young, LLP
All rights reserved.

Q&A with PA Secretary of Transportation Leslie S. Richards



Government Affairs News: Under your direction, what are some of PennDOT’s accomplishments?

Leslie Richards (LS): The key to successful project delivery is planning that is broad and comprehensive. In 2017, I launched our PennDOT Connects program to build external relationships by actively involving municipal stakeholders early in the scope and design. As the first planner to become Transportation Secretary in Pennsylvania, I knew this was a gap that needed to be closed.

Over the past year, we have held 32 municipal outreach workshops involving roughly 1,000 participants. The process covered 1,871 projects involving 759 municipalities. We have established a PennDOT Connects website and we have incorporated PennDOT Connects into our planning and project delivery process. It also is being incorporated into an updated design manual. And most of our districts now have a specific planner who will support continued implementation of PennDOT Connects.

To continue addressing concerns on Pennsylvania’s big and old highway and bridge system, Governor Tom Wolf and I have started our Road MaP (Maintenance and Preservation) program. It calls for allocating \$2 billion more over the next decade toward highway and bridge capital projects and basic system preservation. Also, we strengthened and expanded our Recycled Asphalt Program, known as RAP, to help us stretch our dollars for improving lower volume roads. This program represents the first increase specifically for PennDOT maintenance work since 2006. We also have started a \$40-million-a-year Rural Commercial Road Program to address low-volume roads in rural areas that have not seen improvements for many years. The program envisions cost sharing with carriers using these roads.

Working with resources from the far-reaching, bipartisan transportation funding plan, Act 89, adopted in 2013, PennDOT has completed 2,461 construction projects worth \$5.5 billion and has an additional 782 projects worth \$5.6 billion underway. This means that about a third of the projects accelerated or made possible by Act 89 are done or underway.

Last year, PennDOT improved the equivalent of 6,697 miles of two-lane road, resurfaced more than 2,100 roadway miles and fixed nearly 500 structurally deficient bridges.

GAN: What challenges does PennDOT face?

LS: We are dealing very aggressively with a transportation future that seems to be rushing upon us – the development of highly automated vehicles. We in Governor Tom Wolf’s administration have worked to keep Pennsylvania in a leading HAV role. In June of 2016, we created an Autonomous Vehicle Task Force made up of a variety of stakeholders and it delivered to the General Assembly policy recommendations in November of 2016. Since

then, we have hosted two Autonomous Vehicle Summits – the latest last month in Pittsburgh. We focused on three themes – AV safety, infrastructure planning and workforce/economic development.

The AV Summits were structured with the goal of fostering interchange between the industry, policy-makers, advocates of various stripes, local officials, service providers and opinion leaders. During the summit, I announced a strong and balanced interim testing safety package, including an update to the 2016 policy recommendations from our Task Force. PennDOT has called on testing entities in Pennsylvania to pledge compliance to those policy recommendations for safe AV testing, as we continue to ask the General Assembly to enact legislation to give PennDOT legal authority to oversee testing safety. We also announced at the summit that PennDOT joined with the Pennsylvania Turnpike Commission and Penn State University to create a state-of-the-art advanced technology training and testing facility.

GAN: How important is diversity to you?

LS: As the first woman to head either Pennsylvania’s transportation department or its predecessor Highway

Department, I am committed to making PennDOT an innovative, smart and diverse organization and one that enhances diversity in all of its external relationships.

To that end, we have been expanding contract opportunities for small, disadvantaged, and diverse businesses and we staged three regional diversity forums to attract more minority- and women-owned enterprises into doing business with us. I also have engaged in a series of women in transportation forums to reach out to young women about building transportation careers.

GAN: What about the challenge of keeping motorists safe on the road?

LS: Safety is at the heart of all we do. Contrary to the national trend, Pennsylvania has seen its statewide fatality numbers drop in recent years and we hope that trend will continue. In 2017, we hit another record low number of fatalities with 1,137 – 51 fewer than in 2016. And this is based on fatality records going back to 1928. We invest roughly \$130 million annually in efforts to support the national Toward Zero Deaths initiative, which was established based on the belief that even one life lost is too many. These efforts include underwriting law enforcement efforts, infrastructure improvements and public education. ■

A Cautionary Right-to-Know Tale

by Karl Myers

When a Pennsylvania agency receives a request for records under the Right-to-Know Law, it must take certain steps before responding. It is required to (1) promptly notify and advise each person who might have possibly responsive records, (2) obtain all such materials from those individuals and (3) review and assess the collected items to determine what is to be disclosed. Once that process is complete, its open records officer is in a position to issue the agency’s final response to the request.

A recent decision shows what can happen to an agency that does not fulfill these responsibilities. In *Uniontown Newspapers v. Pennsylvania Department of Corrections*,¹ a newspaper asked for records about illnesses suffered by prison inmates exposed to fly ash from a nearby dump. The agency’s open records officer forwarded the request via email to a bureau within the agency, without explanation. A bureau representative told the officer that the request related to a specific agency investigation – even though the newspaper’s request did not say that. The officer did not ask to review any records to assess the representative’s conclusion. Nor did the officer ask for any records searches to be conducted. The officer simply denied the request as seeking records relating to an investigation (a type of record exempt under the Right-to-Know Law) based solely on the representative’s erroneous narrowing of the scope of the request.

The newspaper, apparently suspicious of the agency’s contention, appealed to the Office of Open Records, and even took the unusual step of filing an enforcement action in Commonwealth Court. The office and court each ruled against the agency and ordered full disclosure to the newspaper. But the agency only made a series of partial disclosures throughout the litigation. Almost four years had passed after the newspaper first submitted its records request, yet it still did not have all the records it had asked for.

The court decided the agency had acted in bad faith. The “primary problem” was that the agency failed to give specific and separate consideration to the request. Instead, the agency just presumed (incorrectly) that the newspaper was trying to obtain records from a particular investigation. Based on that assumption, the agency denied the request. It was not until “well into the litigation” that the agency actually searched for records. The court concluded that denying access without trying to obtain and evaluate any records constitutes bad faith. And even after the agency did start to look for documents, it made only a series of “piecemeal, incomplete disclosures” that failed to comply with the orders for full disclosure. This, too, was bad faith.

As a result of the agency’s transgressions, the court imposed the maximum statutory penalty of \$1,500. The court also left open

the possibility of a \$500 per day fine for future noncompliance, as well as an award to the newspaper of its attorneys' fees.

The proceedings in *Uniontown Newspapers* are ongoing, so it remains to be seen what might be forthcoming in the case. Regardless, the court's decision shows that agencies must be mindful of their public records obligations, and need to treat requests with individualized attention by following each step required by the Right-to-Know Law. ■

¹ *Uniontown Newspapers v. Pa. Dep't of Corr.*, No. 66 M.D. 2015, ___ A.3d ___, 2018 WL 2438699 (Pa. Commw. Mar. 23, 2018) (Simpson, J.).



Karl S. Myers represents government entities and contractors in governmental litigation matters, including proceedings involving the Pennsylvania Right-to-Know Law, bid protests, and state constitutional disputes. For more information, please contact Karl at 215.564.8193 or kmyers@stradley.com.

People News



Bill Sasso was named to the Philadelphia Business Journal's "Power 100" list, a compilation of "the most influential people in greater Philadelphia."

Bill was also named to City and State Pennsylvania's 2018 "Power 100" list. The list honors the 100 most influential people in government, business, culture and social services.

Bill served as a panelist at the Philadelphia Business Journal's "Legends and Rainmakers in Law: Building a Practice" event in Philadelphia. Bill spoke on the "Legends of the Bar" panel, where he and several prominent city lawyers discussed how they built their practices and how the business of law has changed in recent years.



Mark Chopko served as a panelist for school administrators of Catholic Higher Education at the Association of Catholic Colleges and Universities' meeting in Washington, D.C. Mark's presentation discussed civil law realities of being a Catholic institution of higher education, and explored corporate structures, employment, regulatory, and church and state issues confronting college leadership. The presentation was paired with an exploration of canon law issues.

Mark also served as a speaker at the 27th Annual National Catholic Risk Retention Group Meeting in St. Petersburg, Florida. Mark's topic, "Litigation Under a Spotlight: Drawing Lines and Protecting the Church," explored how litigation can be used, and sometimes misused, by litigants. Given the very public nature of all cases involving religious organizations in the U.S., the litigation goals of a church have to align with the values and expectations of the church. He discussed practical approaches to the use of statutory and constitutional defenses, and alternative means to resolve disputes.



Cathy Ward served as moderator at the 6th Annual Future of South Jersey Conference. Cathy's panel, entitled "South Jersey Real Estate Market, Business Climate, and More!" assessed the state of the market and key trends and issues ahead for the next 12 months.



Karl Myers has been appointed vice chair of the Pennsylvania Bar Association's Appellate Advocacy Committee. Karl will serve in this capacity for the 2018-2019 Bar Association year.

Karl has also been appointed secretary and treasurer of the Pennsylvania Bar Association's Administrative Law Section. Karl was appointed during the PBA's annual meeting in Hershey, Pennsylvania.

Karl served as a moderator at the 2018 Commonwealth Court Practicum. The program, "Practices, Procedures, and Perspectives from the Bench," was presented by the Pennsylvania Bar Association's Administrative Law Section and took place in the Commonwealth Court's en banc courtroom in Harrisburg. Karl's panel, entitled "Court Operations," featured three Commonwealth Court administrators, who discussed the court's rules and procedures in a Q&A session with Karl.



Steve Johnson was named the 2017 Person of the Year by the Association of Insurance and Reinsurance Runoff Companies' at the 13th Annual Commutations and Networking Forum in New Brunswick, New Jersey. Steve was recognized as an international thought leader in the insurance and reinsurance runoff business. In presenting the award, AIRROC's board member Katherine Barker acknowledged Steve's credentials and

significant experience: “This year’s award winner – as described by his nominator – is someone known for his abilities to balance market and administrative solutions that resulted in more efficient mechanisms to wind down estates to the benefit of policyholders and taxpayers.”

Steve also presented the webinar “Corporate Governance – The Basics” for the Pennsylvania Association of Mutual Insurance Companies. Steve and co-presenter Lisa Cosentino of Marcum discussed the Corporate Governance Annual Disclosure requirements and its importance, including the role of the board in developing a CGAD and best practices for CGADs.



Steve Davis Appointed to Board of Directors of Committee of Seventy

Steve Davis has been appointed to the board of directors of Committee of Seventy. The Committee of Seventy was established in 1904 for the express purpose of combating corruption in Philadelphia, playing a major role in the adoption of civil service reforms and the passage of the 1919 and 1951 Home Rule Charters. A nonprofit and nonpartisan organization, Seventy does not endorse candidates or represent any special interests. ■

Government & Public Affairs Practice Group

John R. Saler, <i>Chair</i>	215.564.8709	jsaler@stradley.com
Mark E. Chopko	202.419.8410	mchopko@stradley.com
Steven B. Davis	215.564.8714	sdavis@stradley.com
Stephen J. Johnson	215.564.8010	stephen.johnson@stradley.com
Andrew S. Levine.....	215.564.8073	alevine@stradley.com
Karl S. Myers	215.564.8193	kmyers@stradley.com
William R. Sasso	215.564.8045	wsasso@stradley.com
Mark S. Schweiker	215.564.8003	mschweiker@stradley.com
Catherine M. Ward	856.321.2402	cward@stradley.com