

MUNICIPALITY OF MONROEVILLE
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2578

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE,
ALLEGHENY COUNTY, A HOME RULE COMMUNITY, REPEALING
ORDINANCE NO. 2204 AND RESTORING THE MUNICIPAL MANAGER
AS THE TAX COLLECTOR FOR ALL ACT 511 TAXES AND OTHER
TAXES, FEES, ASSESSMENTS, AND CHARGES THAT ARE LEVIED BY
THE MUNICIPALITY OF MONROEVILLE

WHEREAS, the Municipality has appointed the Elected Tax Collector, pursuant to Section 1202 of the Home Rule Charter, to collect, receive, account for and deposit into the Municipal Treasury all other taxes, fees, assessments, or charges that are levied or established by the Municipality of Monroeville for general or special purposes, including but not limited to all Act 511 taxes.

WHEREAS, the Municipal Council desires to restore the Tax Collector function, to the Municipal Manager, for other taxes, fees, assessments, or charges that are levied or established by the Municipality of Monroeville for general or special purposes, including but not limited to all Act 511 Taxes.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED as follows:

1. Ordinance #2204 shall be repealed;
2. The Municipal Manager shall be restored as the Tax Collector for other taxes, fees, assessments, or charges that are levied or established by the Municipality of Monroeville for general or special purposes, including but not limited to all Act 511 Taxes;
3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed. The following Ordinances are specifically repealed;
4. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any or the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Municipality of

Monroeville that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence clause, section or part thereof not had been included herein.

ORDAINED this 12th day of March, 2013.

ATTEST:

MUNICIPALITY OF MONROEVILLE



Lynette C. McKinney

Lynette C. McKinney
Municipal Manager

Gregory Erosenko
Mayor

ENTERED INTO LEGAL BOOK: March 22, 2013

BRUCE E. DICE & ASSOCIATES, P.C.

ATTORNEYS AT LAW

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April 9, 2013

OPINION VETO POWER UNDER THE BOROUGH CODE AND HRC 604

EXISTING 511 TAX BOROUGH OFFICE GENERAL OPERATION

In March, 2013, Council passed an Ordinance moving the existing 511 Tax Office Department from the present Real Estate Tax Collector back to the Municipal side of government under the Manager. It has come to my attention via a via the Municipal meetings, the Mayor may attempt to exercise his right of veto concerning the Ordinance that was passed in March moving the existing 511 Tax Office Department from the control under the Real Estate Tax Collector back to the Municipal side of government under the Manager.

There is the *Borough Mayors Manual* published by the Department of Community and Economic Development which has a specific section dealing with the consideration of Ordinances. The manual goes on to give some element of clarity concerning what is a legislative function in which the Mayor has veto power versus the administrative function that is not subject to veto. A review of *Eddy v. Ashley Borough, 125A.308 (1924)* and the Manual leads to the conclusion that the general operation of municipal departments and the appointment and removal of Borough employees is administrative function and **not** subject to veto.

The subject Ordinance squarely fits within the administrative action by Council. It takes an existing department and procedurally and simply moves it to be under another department head, ie. the Manager. Nothing more and nothing less. As such, "Council actions on matters establishing its own procedures, actions relating to its own members and actions relating to the detail work of municipal affairs is administrative and need not be submitted to the mayor." *Borough Mayors Manual*, p. 14.

In addition, pursuant to the HRC, Article XXI, Section 2102 – Prohibitions of the HRC reads as follows:

Section 2102. Prohibitions

"No elected Municipal official shall hold any other elective governmental or political office or municipal employment while serving as a elected official."

Article XII – TAX COLLECTOR of the HRC establishes the Tax Collector as an elected municipal official under the HRC.”

When you apply this portion of the HRC to the above fact situation, it becomes apparent that no municipal official shall hold any other municipal employment while serving as an elected official.

Note the words in the HRC under Section 2102 read verbatim as follows:

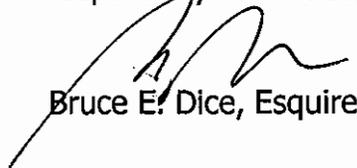
“No elected Municipal official shall hold any other . . . municipal employment. . .”

This language is mandatory and is not permissive; and as such, the language precludes the elected Real Estate Tax Collector from holding such employment.

CONCLUSION

As Chief Legal Officer of the Municipality of Monroeville, it is my legal opinion that the Mayor’s veto is VOID and has no legal effect.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bruce E. Dice', is written over the typed name.

Bruce E. Dice, Esquire

FROM THE DESK OF MAYOR GREGORY H. EROSENKO
MUNICIPALITY OF MONROEVILLE, PENNSYLVANIA

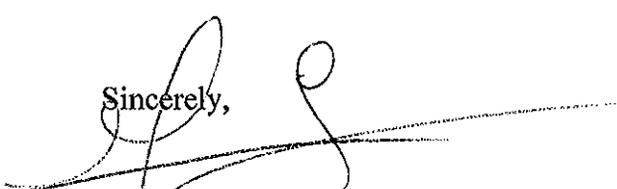
Date: April 9, 2013

Members of Council,

Under Section 604 of the Home Rule Charter I am vetoing the Ordinance which puts all of the 511 taxes back to Manager McKinney for the following reasons:

- A. I do not believe that the 511 Tax Collector (Mr. Patrick Fulkerson) answers to the manager but to Council as per his contract and Ordinance and according to the IRS definition on employees.
- B. Mr. Fulkerson has a lawsuit pending on this very issue and I believe Ordinance should be held in abeyance until the pending lawsuit is settled.
- C. I am also supporting the will of the residents of Monroeville that the 511 taxes remain with Mr. Fulkerson and the tax office.
- D. Ms. McKinney is not qualified to supervise the tax office employees and is not qualified to answer tax questions from the residents.

Sincerely,



Gregory H. Erosenko
Mayor