

A P P E L L A T E

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SUPREME COURT OF PENNSYLVANIA REAFFIRMS THE BROAD SCOPE OF THE COMMONWEALTH COURT'S DECLARATORY JUDGMENT JURISDICTION IN CHALLENGES TO AGENCY INTERPRETATIONS OF STATUTES

By Bruce P. Merenstein

Many Pennsylvania lawyers only encounter the Commonwealth Court of Pennsylvania in its appellate guise, but the court enjoys an unusual hybrid nature, having both appellate and original jurisdiction. The court's original jurisdiction encompasses cases in which the state government is a party, though such cases can also arrive at the court as appeals from state agency decisions. The Supreme Court of Pennsylvania recently issued a significant decision in a case that touched on both kinds of jurisdiction and, in doing so, it broadly interpreted the Commonwealth Court's original jurisdiction to hear cases under the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531-7541, when litigants seek to challenge a state agency's interpretation of a statute.

The Recent Decision

In *Commonwealth, Office of the Governor v. Donohue*, No. 10 MAP 2013 (Aug. 18, 2014), the Supreme Court rejected the Pennsylvania Office of Open Records' interpretation of the time frame in the Right-to-Know Law for an agency to respond to written requests for documents. Although the statute provided that the time for responding to a request "shall not exceed five business days from the date the written request is received by the open-records officer for an agency," the OOR had interpreted the statute to require a response within five business days of when any employee of an agency received the written request.

The case originated with a citizen's challenge to the response by the Office of the Governor to his right-to-know request. Although the OOR upheld the Office of the Governor's denial of the request, it rejected the Office's interpretation of the time required to respond under the statute. The Office of the Governor appealed that ruling to the Commonwealth Court, which dismissed the appeal on the ground that the Office was not aggrieved by the OOR's

ruling because the OOR ultimately agreed with the Office regarding its rejection of the right-to-know request — even though the OOR disagreed on the interpretation of the five-day requirement.

Hedging its jurisdictional bets, the Office of the Governor also filed a declaratory judgment action in the Commonwealth Court under that court's original jurisdiction. In that action, the OOR argued that a declaratory judgment was not a proper vehicle for the challenge, but the Commonwealth Court rejected this argument, as well as the OOR's interpretation of the five-day requirement in the statute.

On appeal to the Supreme Court, the OOR renewed its jurisdictional argument. It contended that the Office of the Governor was required to await an actual controversy in which the OOR adjudicated the issue of the five-day response time against a state agency and ruled against the agency on the merits of the dispute, at which point the agency could take an appeal to the Commonwealth Court. The Supreme Court rejected this argument.

The court noted that there was no uncertainty as to the OOR's construction of the statute, as it had plainly staked out a position that the five-day period began to run upon receipt of a request by any agency employee. Thus, the Office of the Governor and other agencies were compelled to either follow this (allegedly wrong) interpretation of the statute or intentionally violate the statute as interpreted by the OOR. In these circumstances, the court held, "declaratory relief is appropriate in the Commonwealth Court's original jurisdiction to avert the potential 'multiplicity of duplicative lawsuits' with regard to the same issue [the Office of the Governor] raised in its declaratory judgment action."

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The court also rejected the argument that exhaustion of statutory remedies — *i.e.*, requiring the Office of the Governor to adjudicate the issue before the OOR initially — would contribute anything to the ultimate resolution of the dispute: “Given that OOR has stated its position with regard to [the statute] and defended the same on appeal to this Court, it is unlikely that awaiting formal consideration of the question in a future controversy between OOR and [the Office of the Governor] will provide further insight.” In short, because “OOR has adopted an interpretation of the statute in question and stated its intention to apply that interpretation prospectively to the apparent detriment of [the Office of the Governor] (as well as other Commonwealth agencies), ... the Commonwealth Court properly exercised its original jurisdiction over OOR in this matter.”

The Significance of *Donohue*

The Supreme Court’s decision in *Donohue* offers litigants subject to adverse interpretations of statutes by Commonwealth agencies a vehicle for challenging those interpretations, without awaiting an actual controversy with the agency that might lead to an appeal to Commonwealth Court. Bringing a declaratory judgment action frequently offers a number of advantages over adjudicating these types of issues before a Commonwealth agency. For one, the time to get to court is much quicker, as the litigant need not await the sometimes lengthy administrative process before taking an appeal. In addition, a party that would have to change its conduct to adhere to a purportedly incorrect interpretation of a statute can challenge that interpretation without necessarily altering its conduct or, conversely, sub-

jecting itself to the aggravation and possible bad publicity of an enforcement action by the agency.

While there may be times that a party prefers to adjudicate a dispute over an agency’s interpretation of a statute through administrative proceedings initially and then take an appeal to the Commonwealth Court, the Supreme Court’s decision in *Donohue* reaffirms that the broad scope of declaratory judgment jurisdiction in Pennsylvania can offer an alternative route to resolving such disputes. ♦

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