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City of Harrisburg Office of the City Solicitor

May 29, 2019

Mayor Eric Papenfuse
City of Harrisburg
10 N. Second Street, Suite 202
Harrisburg, PA 17101

Re: *Intergovernmental Cooperation Authorities Act for Cities of the Third Class* (Act 124), Act 124 - 2018, P.L. 53 P.S. § 42101, et seq.

Mayor Papenfuse:

In the course of determining the City's rights and obligations under the recently enacted Act 124 of 2018, the Law Bureau has been engaged in an ongoing legal review of the legislative enactment, with an eye toward integrating new requirements without overlooking those longstanding obligations imposed under the patchwork of laws that govern the City's day-to-day activities.

Of note, the new law neither repealed nor supplanted the City's existing legal obligations, but for discreet aspects of the Municipalities Financial Recovery Act, (Act 47), Act of July 10, 1987, P.L. 246, as amended, 53 P.S. § 11701.101, et seq., with regard to extraordinary taxing authority for distressed third class cities and the applicability of the Act 47 exit plan process. Act 124 provides a framework that should be familiar for a distressed municipality (i.e., the 5-year financial recovery plan design) and yet new for Pennsylvania's mid-sized cities (i.e., the formation of an Intergovernmental Cooperation Authority (ICA) to assist in financial recovery).

The mechanics of Act 124 places the obligation to design a five-year financial plan on a City's "chief fiscal officer" and, for any City with Harrisburg's current form of government, provides that the Mayor shall be considered the CFO.

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Specifically, Section 209 prescribes a process for the creation, review and approval the required financial plan. The City had 90 days from the initial organizational meeting of the appointed Board for the ICA to develop and submit a plan for the ICA Board to review and act upon. The Board may approve or disapprove a plan, doing so based on criteria set forth in the Act.

Based on the timing of the appointments of Board members, the initial proposed budget provisions of Act 124 are not currently applicable, in the timeframe for the City's public introduction, adoption and approval on an annual budget were not altered by Act 124. The City was mandated to have an approved budget by December 31 or otherwise operate under the last approved annual budget. Accordingly, to satisfy the requirements of Section 209, the City must submit a complete copy of the 2019 Approved Budget along with a Statement from you regarding criteria set forth under Section 209 (e) (3) (i) and (ii).

The City's annual operating budget and capital budget for the first year must be consistent with the financial plan and prepared in accordance with the City's governing law. The budget must contain funding that would be adequate for debt service payments, legally mandated services and lease payments securing bonds of other government agencies. It must be based upon prudent, reasonable and appropriate assumptions and methods of estimation. Of course, the budget must comply with the governing law and ordinances of the City or applicable State law regarding balanced budgets.

On the last point, as the City operates under the Optional Third Class City Charter Law, 53 P.S. § 41101, 41401, et seq., with the electors of Harrisburg approving the Mayor-Council Plan A form of government 50 years ago, the City has not had a legal obligation to adopt a balanced budget. This issue has been the subject to formal Legal Opinions since 1970 that consistently concluded that as the General Assembly expressly imposed a balanced budget mandate on certain specific forms of local government throughout the Commonwealth, the absence of such a mandate under the adopted Optional form of government made available to electors translates to the absence of a legal mandate for a balanced budget.

Act 124 appears to be the first statutory requirement for a balanced budget, though it has been a best practice recommended through the various Act 47 recovery plans. While Section 104 of Act 124 includes a definitions section for the Act, it does not provide a legal definition for the term “balanced budget” as used in the Act. In the absence of a definition, the Act must be read as whole to glean how the term should be applied. Of note, Section 210 sets forth the powers and duties of the authority with respect to financial plans, generally empowering the Board to require the submission of a five-year plan, with certain obligations for the Board in assisting the City in formulating a plan. Specifically, Section 210 (h) provides that:

“[n]othing in this act shall be construed to limit the power of an assisted city to determine from time to time, *within available funds of the assisted city*, the purposes for which expenditures will be made by the assisted city and the amounts of the expenditures then permitted under the financial plan of the assisted city.” (emphasis added)

That express reservation of municipal power to the City to determine which and how much of any available fund will be expended under a financial plan permits the City to include monies from the fund balance as the source of available funds as determined by the City within the financial plan.

Upon formal submission of the proposed financial plan, with the required budget and statement of the chief financial officer, the Board is required to promptly review and act upon the proposed plan. It may approve the plan, operating budget and capital budget. They shall request from the Controller an opinion or certification on the reasonableness of the assumptions and estimations in the financial plan, but they are not bound by any opinion or certification.

Not more than 30 days from the submission of the Plan and proposed operating budget, the Board must determine whether (1) the plan presents balanced budgets based on “prudent, reasonable and appropriate assumptions” as described in Section 209 for each fiscal year of the plan and (2) the proposed operating budget and capital budget are consistent with the plan. Of import, Section 209 requires that a balanced budget may not include projected revenues that in order to be collected will require an enactment by the General Assembly

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of new taxing powers or the approval of the Dauphin County Court of Common Pleas.

If the Board determines the criteria under Section 209 (g) (3) are satisfied, they shall approve the plan. If the Board does not act within 30 days following submission, the plan would be deemed approved. Should two (2) Board members make a written request to meet and vote on plan approval within that time period that is submitted to the chairperson, the plan would be deemed disapproved if a meeting and vote does not occur.

If the Board disapproves the plan it will be required to notify the City and state in writing in reasonable detail the reasons for disapproval. The City then would be required to submit a revised plan within 15 days of disapproval that eliminates an identified budget imbalance. The Board then has another 15 days to determine if the revised plan satisfies the criteria Section 209 (g) (3).

The Statement that you are required to submit with the proposed plan and budget under Section 209 (e) (3) (ii) mirrors the requirements for criteria under Section 209 (g) (3). Accordingly, the cooperative design of Act 124 reflects that when the chief fiscal officer can in good faith provide the required statement under Section 209 (e) (3) (ii), the requirements of 209 (g) (3) would be satisfied.

Please be advised that I offer this legal opinion in my statutory capacity as Solicitor for the City as provided in Chapter 116 of the Third Class City Code, 11 Pa.C.S.A. §§ 11601, et seq., which specifies that a Solicitor provide control and direction of all legal matters of the City, furnish legal opinions on questions of law and perform duties incident to the Office. In doing so, it is recognized that the provisions of Act 124 - 2018 are new and untested, with no judicial opinions to directly inform or guide the legal interpretation and implementation of the Act. This opinion is based upon an understanding of the City's legal obligations under the various enactments that govern the daily operations of the City in budget formation and adoption, contracting and procurement, the present and ongoing requirements for local governmental operations for designated distressed municipalities, applicable principles of statutory interpretation under Pennsylvania's Statutory Construction Act and related cases, and the Codified Ordinances of the City of Harrisburg.

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This Opinion is not intended to be binding upon any elected official of the City of Harrisburg, but instead offers guidance on the required process and implementation of the aforementioned requirements of the Intergovernmental Cooperation Authorities Act for Cities of the Third Class (Act 124), Act 124 - 2018, P.L. 53 P.S. § 42101, et seq.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neil A. Grover", with a long, sweeping flourish extending to the right.

Neil A. Grover
City Solicitor

cc: Wanda R. D. Williams, Council President
Ben Allatt, Council Vice-President & Chair, B&F Committee
Charles DeBrunner, City Controller
Daniel Miller, City Treasurer
Marc Woolley, Business Administrator
Bruce Weber, Director of Finance
Tiffanie E. Baldock, Sr. Deputy City Solicitor
Kirk Petroski, City Clerk