

Pennsylvania Constitution: The Executive Branch

JAMES S. BOWMAN AMERICAN INN OF COURT

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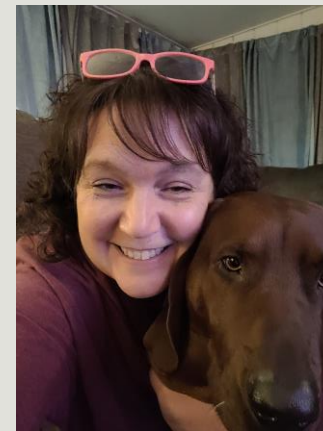
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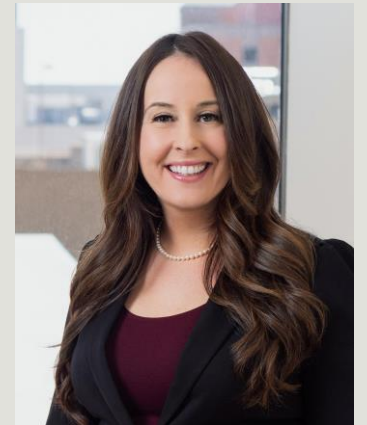
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What we
will cover:

History of the Pennsylvania Constitution

The Governor

The Governor's Cabinet and Military Power

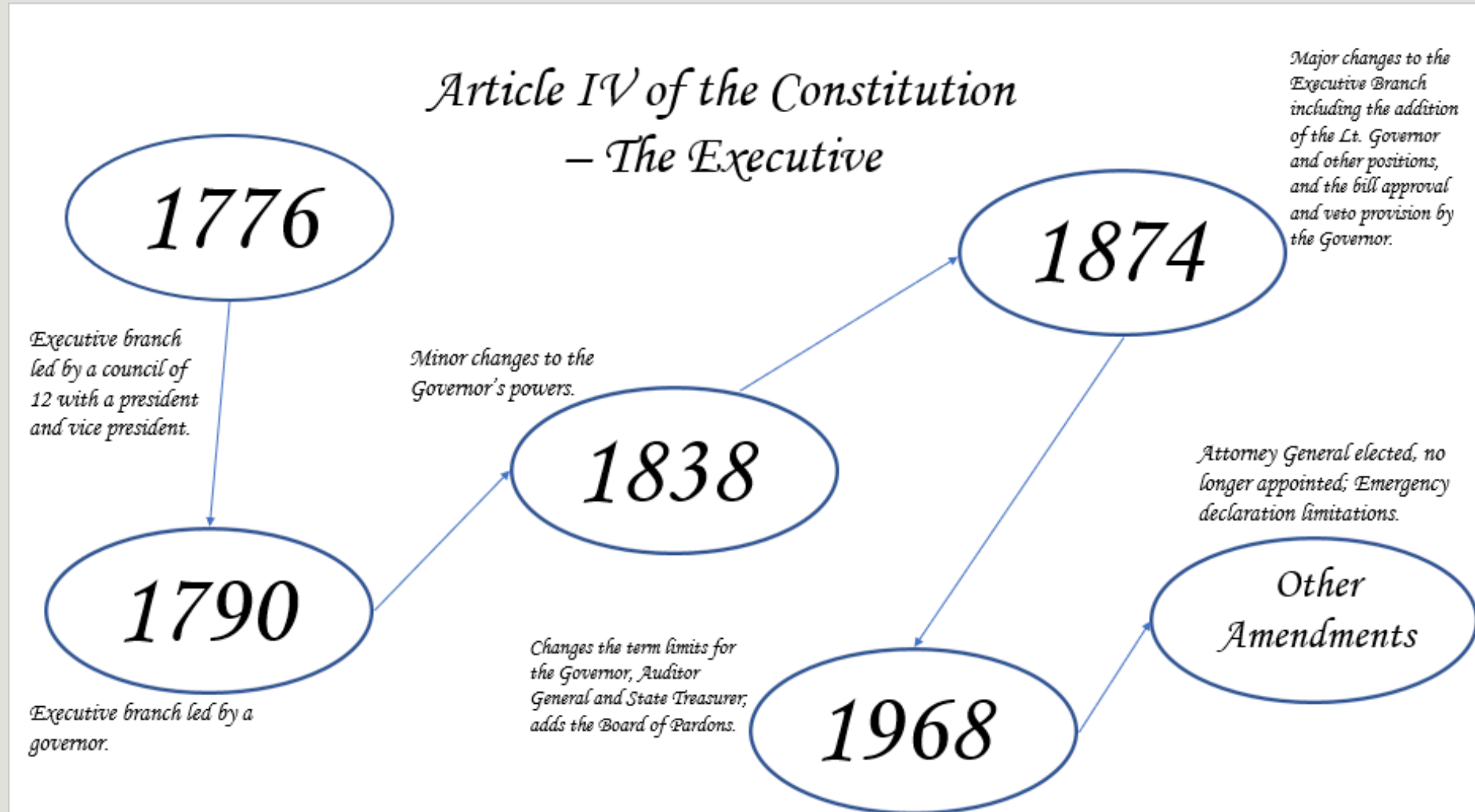
The Lieutenant Governor

The Attorney General

The Auditor General

Other Row Offices

History of the Constitution:



The Governor



The Governor of Pennsylvania

Joshua Shapiro

48th Governor of Pennsylvania

Sworn in on January 17, 2021

Pa. Constitution Article IV, Section 2 – Executive Power

“The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed; he shall be chosen on the day of the general election, by the qualified electors of the Commonwealth, at the places where they shall vote for Representatives.”

Pa. Const., Art. IV, § 2.

Legal status of a Governor’s executive order:

- “The Governor’s power is to execute the laws and not to create or interpret them.” Shapp v. Butera, 348 A.2d 910 (Pa. Cmwlth. 1975).

Relevant Administrative Code Provisions – Governor’s Office and Duties

Section 241 of the Administrative Code – Powers and Duties of Governor include:

- Take care that the laws are faithfully executed;
- Act as Commander-in-Chief of Army and Navy of the Commonwealth;
- Approve/disapprove all investments by departments, boards, or commissions of funds administered by such departments, boards, or commissions;
- Submit to the General Assembly a State budget;
- Do all other acts, make all appointments, fill all vacancies, exercise all the powers vested in him, and perform all the duties imposed upon him, as provided and required by the Constitution and laws of this Commonwealth (catch all);
- Prescribe the filing system to be adopted by each department, board and commission; to direct, with the approval of the Executive Board, what records must be destroyed and what records preserved.

71 P.S. § 241.

Relevant Administrative Code Provisions – Governor’s Office and Duties

- **Section 61 of the Administrative Code** – “The executive and administrative work of this Commonwealth shall be performed by the Executive Department, consisting of the Governor...” 71 P.S. § 61.
 - Executive Department includes most executive agencies and the following independent administrative boards and commissions: Pennsylvania Game Commission, Pennsylvania Fish and Boat Commission, State Civil Service Commission and Pennsylvania Public Utility Commission.
- **Section 64 of the Administrative Code** – “The Executive Board shall consist of the Governor, who shall be Chairman thereof, and six other heads of administrative departments to be designated from time to time by the Governor.” 71 P.S. § 64.
- **Section 71 of the Administrative Code (Employes of the Governor’s Office)** – “The Governor shall appoint, to serve at his pleasure, a Secretary to the Governor, a Budget Secretary, and such consultants, experts, accountants, investigators, clerks, stenographers, messengers, watchmen, and other employes, as may be required for the proper conduct of the work of his office, and of the Executive Board, and shall fix their salaries, wages, fees, or other compensation.” 71 P.S. § 71.

Relevant Administrative Code Provisions – Governor’s Office and Duties

- **Section 249 of the Administrative Code – Powers of the Executive Board**
 - To standardize the qualifications for employment, and all titles, salaries, and wages, of persons employed by the administrative departments, boards, and commissions, except the Office of Attorney General, the Department of the Auditor General and the Treasury Department.
 - To determine, from time to time, the hours when the administrative offices of the State Government shall open and close.

71 P.S. § 249.

Pa. Constitution Article IV, Section 8 – Appointment Power

- a) The Governor shall appoint a Secretary of Education and such other officers as he shall be authorized by law to appoint. The appointment of the secretary of Education and of such other officers as may be specified by law, shall be subject to the consent of two-thirds or a majority of the members elected to the Senate as is specified by law.
- b) The Governor shall fill vacancies in offices to which he appoints by nominating to the Senate a proper person to fill the vacancy within 90 days of the first day of the vacancy and not thereafter.

Pa. Const., Art. IV, § 8.

Relevant Administrative Code Provisions – Appointment Power

- **Section 671 of the Administrative Code** – The Governor may appoint (without Senate consent) such public officers which he is authorized by law to appoint including, without limitation, members of independent administrative boards and commissions, members of departmental administrative bodies, boards and commissions and departmental administrative officers and members of the advisory boards and commissions.
- The Governor must nominate and appoint (with advice and consent of **2/3 of members elected to Senate**):
 - Vacancies in offices of Attorney General, State Treasurer and Auditor General; and
 - Members authorized to appoint in PLCB and Pennsylvania Turnpike Commission.
- The Governor must nominate and appoint (with advice and consent of **majority of members elected to Senate**):
 - Secretary of Education, Secretary of the Commonwealth, Adjutant General, Insurance Commissioner, Secretary of Banking and Securities, Secretary of Agriculture, Secretary of Transportation, Secretary of Health, Secretary of Drug and Alcohol Programs, Commissioner of the State Police, Secretary of Corrections, Secretary of Labor and Industry, Secretary of Aging, Secretary of Human Services, Secretary of General Services, Secretary of Revenue, Secretary of Community and Economic Development, Secretary of Environmental Protection and Secretary of Conservation and Natural Resources.

Pa. Constitution Article IV, Section 9 – Pardoning Power

- a) In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file for that purpose.
- b) The Board of Pardons shall consist of the Lieutenant Governor who shall be chairman, the Attorney General and three members appointed by the Governor with the consent of a majority of the members elected to the Senate for terms of six years. The three members appointed by the Governor shall be residents of Pennsylvania. One shall be a crime victim, one a corrections expert and the third a doctor of medicine, psychiatrist or psychologist. The board shall keep records of its actions, which shall at all times be open for public inspection.

Pa. Const., Art. IX, § 9.

Pa. Constitution Article IV, Section 10

Information from Department Officials

The Governor may require officers of the Executive Department regarding matters pertaining to the duties of their respective offices.

Pa. Const., Art. IV, § 10.

Pa. Constitution Article IV, Section 11

Messages to General Assembly

Governor must provide information about the state of the Commonwealth to the General Assembly and recommend to their consideration.

Pa. Const., Art. IV, § 11.

Pa. Constitution Article IV, Section 12 – Power to Convene and Adjourn the General Assembly

- In extraordinary circumstances, the Governor may convene and adjourn the General Assembly.
- When both Houses disagree about the time of adjournment, the Governor may set the adjournment time, which may not exceed four months.
- The Governor may also issue a proclamation convening the Senate to conduct Executive business.

Pa. Const., Art. IV, § 12.

Pa. Constitution Article IV, Section 15 – Approval of Bills

“Every bill which shall have passed both Houses shall be presented to the Governor; if he approves, he shall sign it...”

Pa. Const., Art. IV, § 15.

Pa. Constitution Article IV, Section 15 – Veto

“... but if he shall not approve he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their journal, and proceed to re-consider it. If after such re-consideration, two-thirds of all the members elected to that House shall agree to pass the bill, it shall be sent with the objections to the other House by which likewise it shall be re-considered, and if approved by two-thirds of all the members elected to that House it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each House, respectively. If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within 30 days after such adjournment.”

Pa. Const., Art. IV, § 15.

Recent Case Law

Scarnati v. Wolf, 173 A.3d 1110 (Pa. 2017)

- In 2014, Senators challenged the constitutionality of the Governor's disapproval of specific items in the General Appropriations Act of 2014 and the 2014 Fiscal Code Amendments.
- Petition for Review was initially filed in the Commonwealth Court.
- Commonwealth Court decision was subsequently appealed to the Supreme Court of Pennsylvania.

Questions

- Does the adjournment of the house in which a bill originated prevent the return of the bill?
- When the House where the bill originated is adjourned, thereby preventing return of the bill, does the Governor comply with Article IV, Section 15's alternative procedure for his veto by issuing a press release that mentions the vetoes without stating that the bill and vetoes have been filed in the office of the Secretary of the Commonwealth instead of issuing a proclamation?

Pa. Constitution Article IV, Section 16 – Partial Disapproval of Appropriations Bills (Line Item Veto)

- “The Governor shall have power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.”

Pa. Const., Art. IV., § 16.

See, Jubelirer v. Rendell, 953 A.2d 514 (Pa. 2008).

Pa. Constitution Article IV, Section 19 – State Seal; Commissions

- Commissions must be in the name and by the authority of the Commonwealth of Pennsylvania.
- Must be sealed with the State seal and signed by the Governor.

Pa. Const., Art. IV, § 19.

Pa. Constitution Article IV, Section 20 – Disaster Emergency Declaration and Management

- a) A disaster emergency declaration may be declared by executive order or proclamation of the Governor upon finding that a disaster has occurred or that the occurrence or threat of a disaster is imminent that threatens the health, safety or welfare of this Commonwealth.
- b) Each disaster emergency declaration issued by the Governor under subsection (a) shall indicate the nature, each area threatened and the conditions of the disaster, including whether the disaster is a natural disaster, military emergency, public health emergency, technological disaster or other general emergency, as defined by statute. The General Assembly shall, by statute, provide for the manner in which each type of disaster enumerated under this subsection shall be managed.
- c) A disaster emergency declaration under subsection (a) shall be in effect for no more than twenty-one (21) days, unless otherwise extended in whole or part by concurrent resolution of the General Assembly.
- d) Upon the expiration of a disaster emergency declaration under subsection (a), the Governor may not issue a new disaster emergency declaration based upon the same or substantially similar facts and circumstances without the passage of a concurrent resolution of the General Assembly expressly approving the new disaster emergency declaration.

Pa. Const., Art. IV, § 20.

- On March 6, 2020, Governor Wolf issued a Proclamation of Disaster Emergency in response to the Covid-19 Pandemic.
 - The initial term of the Proclamation was 90 days, but was subsequently renewed and ultimately lasted for 16 months.
 - Subsections (c) and (d) were added by Pennsylvania voters by ballot referendums on May 18, 2021.

The Governor's Cabinet

Pa. Constitution Article IV, Section 8 – The Executive

“The Governor shall appoint a Secretary of Education and such other officers as he shall be authorized to appoint.”

Pa. Const., Art. IV, § 8(a).

The Administrative Code of 1929, Section 206 – Department Heads

“Each administrative department shall have as its head an officer who shall ... exercise the powers and perform the duties by law vested in and imposed upon the department.”

71 P.S. § 66.

The Governor's Cabinet – Relevant Case Law

Shapp v. Butera, 348 A.2d 910 (Pa. Cmwlth. 1975).

“We find no constitutional or statutory description of ‘Cabinet Members.’ The Governor’s ‘Cabinet’ consists of those persons he chooses.” *Id.* at 914.

The Governor's Military Powers

The governor shall be commander-in-chief of the military forces of the commonwealth, except when they shall be called into actual service of the united states.

Pa. Const. Art. IV, § 7(May 16, 1967, P.L. 1044, J.R.4)

Governor's Military Powers

The Governor of this Commonwealth as Commander-in-Chief shall have the powers enumerated hereafter in this title over the Pennsylvania military forces which includes the Pennsylvania National Guard when not absent from this Commonwealth on the call or order of the United States and the Pennsylvania Guard when formed, organized and equipped under order from the Governor in conformity with this title.

51 Pa.C.S. § 501.

Governor's Military Powers Disasters and Emergencies

Commander-in-chief of military forces. – During the continuance of any state of disaster emergency, the Governor is commander-in-chief of the Pennsylvania military forces. To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but this does not restrict the authority of the Governor to do so by orders issued at the time of the disaster emergency.

35 Pa.C.S. § 7301.

The Lieutenant Governor



The Lieutenant Governor of Pennsylvania

Austin Davis

Pennsylvania's 35th Lieutenant Governor

Sworn in on January 17, 2021

The Lieutenant Governor History

- From 1777 to 1790, the executive branch of Pennsylvania's state government was headed by a Supreme Executive Council consisting of a representative of each county and of the City of Philadelphia. The Vice President of the Council – also known as the Vice President of Pennsylvania – held a position analogous to the modern office of lieutenant governor.
 - The Vice President was elected to a one-year term and could serve up to three years.
 - Ten men served as Vice President during the time of the Council's existence.
- The office of lieutenant governor was created by the 1874 Constitution.
- The elected lieutenant governor is a constitutional officer of the Commonwealth of Pennsylvania.
- The election term is four years.
- Current Lt. Governor August Davis is the first African American and first millennial (born in 1989) sworn into the office.

Pa. Constitution Article IV, Section 4 – Lieutenant Governor

“A Lieutenant Governor shall be chosen jointly with the Governor by the casting by each voter of a single vote applicable to both offices, for the same term, and subject to the same provisions as the Governor...”

Pa. Const., Art. IV, § 4.

The Lieutenant Governor Election Process

- Each party picks a candidate independently of the gubernatorial primary.
- The winners (gubernatorial and lieutenant governor) of the party primary election are teamed as a single ticket for the general election in November.
- The Constitution of 1968 enabled the lieutenant governor to succeed themselves to one additional four-year term.

Pa. Constitution Article IV, Sections 5 and 6 - Qualifications

A candidate for lieutenant governor must be:

- A citizen of the United States;
- At least 30 years old; and
- A resident of Pennsylvania for at least seven years.

Pa. Const., Art. IV, § 5.

Additionally, the lieutenant governor may not hold congressional office, any other Pennsylvania statewide office, or any federal office; however, the lieutenant governor may be a reserve member of the national guard.

Pa. Const., Art. IV, § 6.

Pa. Constitution Article IV – Duties

The duties of the lieutenant governor are set forth in the Pennsylvania Constitution.

- The lieutenant governor presides in the Pennsylvania Senate and is first in the line of succession to the Governor. He/she can vote if there is a tie in the Senate on any question with the exception of (1) the final passage of a bill or joint resolution; (2) the adoption of a conference report; or (3) the concurrence in amendments made by the House of Representatives.

Pa. Const., Art. IV, § 4.

- The lieutenant governor serves as the Chairman of the Board of Pardons.

Pa. Const., Art. IV, § 9(b).

- The lieutenant governor assumes the duties of the Governor in case of a Governor's death, conviction on impeachment, failure to qualify or resignation for the remainder of the term. If the Governor is disabled, the powers, duties and emoluments are transferred to the lieutenant governor until the disability no longer exists.

Pa. Const., Art. IV, § 13.

Lt. Governor – Statutory Duties

As of May 2016, the lieutenant governor has the following statutory duties:

- Serve as a member of the Pennsylvania Emergency Management Council (35 Pa.C.S. § 7312(a));
- Serve as a member of the Military Base Community Enhancement Commission (12 Pa.C.S. § 402b));
- Serve as Chairman of the Local Government Advisory Committee (1996 Act 58, § 503); and
- There shall be a State Fire Commissioner, who, through the Lieutenant Governor, shall report to the Governor on all matters concerning fire safety in this Commonwealth (35 Pa.C.S. §7383)).

The Lieutenant Governor Fun Facts

- Pennsylvania is one of 45 states that has an official lieutenant governor.
- Pennsylvania is the only state that provides an official residence for its lieutenant governor.
 - State House at Fort Indiantown Gap was constructed in 1940 and formerly served as the governor's "summer residence," but became available for the lieutenant governor in 1968 when the current governor's residence was completed in Harrisburg.
- The first lieutenant governor elected in Pennsylvania was John Latta (D) who served from 1875 – 1879 under Governor John F. Hartranft (R).
 - Since that time, there have been 34 elected lieutenant governors in Pennsylvania (including current Lt. Governor Austin Davis), eight of which are still living.
- There have only ever been 3 split-party governor/lieutenant governor teams in Pennsylvania.
- There have only ever been 2 acting lieutenant governors in Pennsylvania.
 - Jake Corman served from May 17, 2022 to May 23, 2022 while Lt. Governor John Fetterman had a pacemaker implanted and recovered.
 - Kim Ward served from January 3, 2023 to January 17, 2023 after John Fetterman resigned to serve in the U.S. Senate and before Lt. Governor-elect Austin Davis was sworn in.
- The budget for the Pennsylvania Lieutenant Governor's offices in Fiscal Year 2022 was \$2,043,000.

Office of the Attorney General



The Attorney General of Pennsylvania

Michelle Henry

Acting Attorney General since January 17, 2023

Office of the Attorney General

Background and History

The position of the Attorney General finds its roots in 1643, before the arrival of English Common Law, as an office within government of the area known as New Sweden. Appointees were selected by the King of Sweden.

The arrival of William Penn in 1681 as the proprietor of Pennsylvania began a continuing succession of notable Attorneys General including David Lloyd (1686 – 1710), who designed Pennsylvania’s first judicial system, and Andrew Hamilton (1717-1726), who defined the early role of the Office by making significant changes from the European systems of justice.

The “Proprietary” Attorneys General existed until 1776 when the Attorney General became a constitutional officer of the democratic Commonwealth. John Morris was the first Attorney General appointed under the Constitution.

Beginning in 1923, the Administrative Code made the Attorney General the administrator for the Pennsylvania Department of Justice. The Attorney General served at the pleasure of the Governor.

Pa. Constitution Article IV, Section 8 – Appointing Power

- a) The Governor shall appoint an **Attorney General**, a Superintendent of Public Instruction and such other officers as he shall be authorized by law to appoint. The appointment of the **Attorney General**, the Superintendent of Public Instruction and of such other officers as may be specified by law, shall be subject to the consent of two-thirds of the members elected to the Senate.

Pa. Const., Art. IV, § 8(a) (before the May 20, 1975 and May 16, 1978 amendments).

Pa. Constitution Article IV, Section 4.1 – Attorney General

An Attorney General shall be chosen by the qualified electors of the Commonwealth on the day the general election is held for the Auditor General and State Treasurer; he shall hold his office during four years from the third Tuesday of January next ensuing his election and shall not be eligible to serve continuously for more than two successive terms; **he shall be the chief law officer of the Commonwealth and shall exercise such powers and perform such duties as may be imposed by law.**

Pa. Const., Art. IV, § 4.1 (added by amendment of May 16, 1978).

The Commonwealth Attorneys Act 71 P.S. § 732-101, *et seq.*

This Act arises from a task force the Pennsylvania Senate directed the Joint State Government Commission to appoint in order to recommend legislation for the organization and powers of the new Attorney General's Office. Senate Resolution 61 (Nov. 1977).

On September 1, 1978, the task force issued a final report including draft legislation for what would become the Commonwealth Attorneys Act.

Final Joint State Government Commission, "Office of Elected Attorney General: Final Report" (Sep. 1, 1978).

The Commonwealth Attorneys Act 71 P.S. § 732-101, *et seq.*

Final State Government Commission,
“Office of Elected Attorney General: Final Report” (Sep. 1, 1978).

The Act grants “the Attorney General as the chief law officer ... the exclusive primary responsibility to conduct all litigation” on behalf of the commonwealth and all Commonwealth agencies. Final Report at 10.

This is a “broad grant of authority to conduct litigation ... defend[ing] suits brought against Commonwealth agencies[.]” *Id.* at 11.

This grant of authority to defend the Commonwealth and its agencies is necessary to “assure independent legal review of the implementation of the statutory policies of the Commonwealth[,]” based upon the “constitutional mandate” that the newly independent Attorney General function as “a necessary check and balance” to the Executive branch. *Id.* at 5 (emphasis in original).

The Commonwealth Attorneys Act

71 P.S. § 732-101, *et seq.*

Chapter 2. Office of Attorney General

§ 732-201. Established as an Independent Department

- a) General Provisions. – The Office of Attorney General shall be an independent department and shall be headed by the Attorney General. The Attorney General shall exercise such powers and perform such duties as are hereinafter set forth. As an independent administrative department the Office of Attorney General shall be subject to the same limitations contained in the act of April 9, 1929 (P.L. 177, No. 175), known as “The Administrative Code of 1929,” and all other acts as are applicable to the independent Department of Auditor General or State Treasury.

§ 732-206. Law Enforcement and Criminal Investigations; Investigating Grand Juries

- a) ... Attorney General shall have the power to investigate any criminal offense which he has the power to prosecute under section 205; he shall continue the existing programs relating to drug law enforcement. The Pennsylvania State Police shall cooperate with the Attorney General and furnish such services as the Attorney General shall request.
- b) ... The Attorney General shall convene and conduct investigating grand juries as provided in the act of November 22, 1928 (P.L. 1148, No. 271), known as the ‘Investigating Grand Jury Act.’

§ 732-207. Membership on Agencies

The Attorney General shall serve as a member of the Board of Pardons and he, or his designated deputy, shall serve as a member of the Joint Committee on Documents, the Hazardous Substances Transportation Board, the Board of Finance and Revenue, the Pennsylvania Police Officers Education and Training Commission.

§ 732-208. Access to Books and Papers

The Office of Attorney General shall have the right to access at all times the books and papers of any Commonwealth agency necessary to carry out his duties under this act.

The Commonwealth Attorneys Act 71 P.S. § 732-101, *et seq.*

§ 732-202. Vacancy in Office

In the event of a vacancy in the position of Attorney General, the Governor shall nominate, in accordance with the provisions of the Constitution of Pennsylvania and, by and with the advice and consent of two-thirds of the members elected to the Senate, appoint a person to fill the position for the balance of the unexpired term of the Attorney General. Whenever there shall be a vacancy in the position of Attorney General, the first deputy shall exercise the powers and perform the duties of the Attorney General until the vacancy is filled.

The Commonwealth Attorneys Act

71 P.S. § 732-101, *et seq.*

§ 732-204. Legal Advice and Civil Matters

a) Legal Advice.

- Matters arising from official duties and powers of Governor and agencies and constitutionality of legislation presented to Governor
- Declaratory judgment in Commonwealth Court
- Uphold and defend constitutionality of statutes
- Opinion interpreting any appropriation act

b) Commonwealth agencies; rules and regulations.

- Review all proposed rules and regulation for form and legality before deposited to the Legislative Reference Bureau
- If an agency disagrees with Attorney General's objections, the agency can promulgate with or without revisions and publish with a copy of the objections; which may be appealed by Attorney General in Commonwealth Court

c) Civil litigation; collection of debts.

- Representation in any action brought by or against Commonwealth or its agencies and may intervene in any other action
- Collect, by suit or otherwise, all debts, taxes and accounts due to Commonwealth
- Authorize General Counsel or independent agency counsel to litigate in Attorney General's stead
- Approve all settlements over the maximum amounts permitted

d) Administration of consumer affairs.

e) Limitations on civil litigations.

- The Attorney General "shall not agree to the entry of a consent decree in any action" without approval of the Governor and notice to General Assembly

f) Deeds, leases, contracts and fidelity bonds.

- Review for form and legality

The Commonwealth Attorneys Act

71 P.S. § 732-101, *et seq.*

§ 732-205. Criminal Prosecutions

- a) Power to prosecute in any county criminal court for:
 - 1) Criminal charges against state officials or employees “affecting the performance of their public duties or the maintenance of the public trust” and criminal charges against persons “attempting to influence such state officials or employees or benefit from such influence or attempt to influence”
 - 2) Criminal charges involving corrupt organizations
 - 3) Upon request by district attorney
 - 4) Petition to supersede district attorney to prosecute a criminal action or institute criminal proceedings
 - 5) Intervention request by “president judge in the district having jurisdiction of any criminal proceeding”
 - 6) Criminal charges arising out of enforcement provisions of statutes
 - 7) “Indictments returned by an investigating grand jury”
 - 8) Criminal charges “arising out of activities of the State Medicaid Fraud Control Unit”
- b) Concurrent prosecutorial jurisdiction with district attorney for 1, 2, and 6 above and “may refer to district attorney with his consent any violation or alleged violation of the criminal laws of the Commonwealth which may come to his notice”
- c) May prosecute appeals in criminal actions and intervene in criminal appeals
- d) Can employ deputies necessary to prosecute criminal actions or appeals; costs incurred are paid by Commonwealth

The Commonwealth Attorneys Act

71 P.S. § 732-101, *et seq.*

Chapter 3. Office of General Counsel

§ 732-303. **Supersession and Intervention (General Counsel)**

- a) Representation of agency by General Counsel. – Whenever any action is brought by or against any executive branch agency, the Governor or other executive branch official, the Governor may request in writing, setting forth his reasons, the Attorney General to authorize the General Counsel to supersede the Attorney General and represent the agency, the Governor or other executive branch official.
- b) Intervention by General Counsel. – If the Attorney General does not grant the request, the Governor may authorize the General Counsel to intervene in the litigation. Such intervention shall be a matter of right and when exercised, confer upon the General Counsel the obligation to represent the Governor and his interests as Chief Executive Officer of the Commonwealth and its Executive Department. The Attorney General shall at all times continue to represent the Commonwealth.

The Commonwealth Attorneys Act

71 P.S. § 732-101, *et seq.*

Chapter 4. Counsel for Independent Agencies

§ 732-403. Supersession and Intervention (Independent Agencies)

- a) Representation of agency by agency counsel.— Whenever any action is brought by or against any independent agency or independent agency official, the agency head may request in writing, setting forth his reasons, the Attorney General to authorize the agency counsel to supersede the Attorney General and represent the agency or its official.
- b) Intervention by agency counsel. – If the Attorney General does not grant the request, the agency head may authorize the agency counsel to intervene in the litigation. Such intervention shall be a matter of right and when exercised, confer upon the agency counsel the obligation to represent the agency. The Attorney General shall at all times continue to represent the Commonwealth.

Office of the Attorney General

Relevant Case Law

Synthes USA HQ, Inc. v. Commonwealth of Pennsylvania,
--- A.3d ---, 2023 WL 2145670 (Pa. Feb. 22, 2023)

“While the Attorney General regularly represents the Department, it is not merely the Department’s law firm. Instead, the Pennsylvania Constitution designates the Attorney General as the ‘chief law officer’ for the Commonwealth as a whole, accountable directly to the Pennsylvania voters, and independent of the Governor and the Commonwealth agencies.”

“The CAA provides both for the Attorney General’s representation of the Executive Branch and also for the Attorney General’s independence from the Executive Branch.”

Department of the Auditor General



Department of the Auditor General

Timothy DeFoor

Pennsylvania's 52nd Auditor General

Sworn in on January 19, 2021

Department of the Auditor General

Purpose

“Watchdog” of the State Treasury

The Department of the Auditor General is charged with ensuring that all money to which the Commonwealth of Pennsylvania is entitled is deposited in the State Treasury and that public funds are spent legally and properly.

Department of the Auditor General

History

- The origins of the Department of the Auditor General can be traced back 200 years, even before Pennsylvania had a Governor.
- Under the first Constitution of the Commonwealth of Pennsylvania of 1776, the executive power was vested in a “Supreme Executive Council” which chose a president from among its rotating membership.
- The position of Governor, which replaced the Council, was not created until 1790.
- In the interim, the state legislature created the “Office for Registering the Public Accounts,” whose head was called the “Register-General of the Public Accounts” and was appointed by the legislature.
- The Register-General was charged with reviewing, settling, and adjusting the state’s accounts.
- That office was abolished in 1809 and its duties were transferred to the newly created office of “Auditor-General,” whose occupant was appointed by the Governor.
- Forty years later, the state legislature gave the “Auditor General” independence from the Governor by making the former an elective office, a status confirmed by the state constitution of 1874, and reaffirmed by the current constitution of 1968.

Pa. Constitution Article VIII, Section 10

Constitutional Authority

- “The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with **generally accepted auditing standards**.”

Pa. Const., Art. VIII, § 10.

- The drafters of Article VIII, Section 10 explained that the **term generally accepted auditing standard** would permit an evaluation of whether expenditures have been made consistent with legislative intent and whether state moneys were being spent “effectively and efficiently.”

See, Journal of Constitutional Convention, Vol. 1, No. 39 at 609.

- “We see the governmental audit as a financial audit plus an operational or management or performance audit. [...] Our viewpoint is that an examination of operations is a natural extension of any financial audit.” In Petitioners’ view, the drafters’ words demonstrate that they did not intend to exclude performance audits when using the term financial affairs in Article VIII, Section 10.

The Pennsylvania Fiscal Code Authority

§ 401. Audits of accounts of debtors and agents of the Commonwealth

The Department of the Auditor General shall have the power, and its duty shall be,

- a) To audit all accounts for taxes, or other moneys due to the Commonwealth, which shall have been settled by the Department of Revenue, to approve the same if found to be correct, and to return them to the Department of Revenue with a request for a resettlement in the event that any error or discrepancy be found in such accounts;
- b) To audit the accounts of city and county officers, in so far as may be necessary to determine whether such officers have reported and transmitted all moneys payable by them to the Commonwealth, and to furnish the Department of Revenue a report in such detail as shall be sufficient for said department to state and settle an account covering any delinquency;
- c) To audit the accounts of magistrates, aldermen, justices of the peace, burgesses, mayors, and court clerks, for the purpose of ascertaining whether all fines and penalties collected by them and payable to the Commonwealth, or any agency thereof, have been correctly reported and promptly transmitted, and to furnish the Department of Revenue a report in such detail as shall be sufficient for said department to state and settle an account covering any delinquency;
- d) To audit the accounts and records of all agents of the Commonwealth charged with the duty of assessing, appraising, or collecting State taxes or license fees; and
- e) To audit all other accounts between the Commonwealth, acting through any administrative agency thereof, and any person liable to pay money thereto for any purpose or reason whatsoever.

72 P.S. § 401.

The Pennsylvania Fiscal Code Authority

§ 402. Audits of affairs of departments, boards and commissions

Except as may otherwise be provided by law it shall be the duty of the Department of the Auditor General to make all audits of transactions after their occurrence, which may be necessary, in connection with the administration of the financial affairs of the government of this Commonwealth, with the exception of those of the Department of the Auditor General. It shall be the duty of the Governor to cause such audits to be made of the affairs of the Department of the Auditor General.

Annual Audit of the affairs of every department, board, and commission of the Executive Branch, and all collections made by departments, boards, or commissions, and the accounts of every State institution, shall be audited quarterly.

Special audits of the affairs of all departments, boards, commissions or officers, may be made whenever they may, in the judgment of the Auditor General, appear necessary, and shall be made whenever the Governor shall call upon the Auditor General to make them.

72 P.S. § 402.

The Pennsylvania Fiscal Code Authority

§ 403. Audits of agencies receiving State aid

“... to audit the accounts and records of every person, association, corporation, and public agency, receiving an appropriation of money, payable out of any fund in the State Treasury, or entitled to receive any portion of any State tax for any purpose whatsoever, as far as may be necessary to satisfy the department that the money received was expended or is being expended for no purpose other than that for which it was paid.

If at any time the department shall find that **any money received** by any person, association, corporation, or public agency, **has been expended for any purpose other than that for which it was paid**, I shall forthwith notify the Governor, and shall decline to approve any further requisition for the payment of any appropriation, or any further portion of any State tax, to such person, association, corporation, or public agency, until an amount equal to that improperly expended shall have been expended for the purpose for which the money improperly expended was received from the State Treasury.

If an audit completed by the department under this section makes **recommendations**, any person, association, corporation, or public agency being audited **shall submit a response to the department detailing adoption of such recommendations, or the reason why recommendations have not been adopted**, within one hundred and twenty business days of the publication of the audit. The department shall provide notice to the subject of an audit sixty business days after the date of the audit's publication that future appropriations could be denied for the person, association, corporation or public agency if a response is not made.”

72 P.S. § 403.

Relevant Administrative Code Provisions – Authority

71 P.S. § 246. Auditor General

- a) The Auditor General shall exercise such powers and perform such duties as may now or hereafter be vested in and imposed upon him by the Constitution and the laws of this Commonwealth.
- b) In addition to any other duties imposed by law, the Auditor General shall, on a quadrennial basis, conduct a financial audit and a compliance audit of the affairs and activities of the Pennsylvania Turnpike Commission.
- c) The Auditor General shall submit, to the chairpersons of the Senate Committee on Transportation and the House of Representatives Committee on Transportation, copies of the completed quadrennial audits of the Pennsylvania Turnpike Commission shall be paid by the Pennsylvania Turnpike Commission.

71 P.S. § 311. Power and duties retained

Subject to any inconsistent provisions in this act contained, the Department of the Auditor General shall exercise its powers and perform its duties as provided in the Fiscal Code and other applicable laws.

Office of the Auditor General

3 Types of Audits

1) Financial Audits

- Financial Reporting
- Review of Internal Controls
- For Example – Audit of the PA Turnpike Commission as required by the Admin Code

2) Performance Audits

- Looks beyond financial reporting
- Examines broader issues:
 - Program Results
 - Economy
 - Efficiency Issues
 - Determine if activities funded by tax dollars are operating in the most appropriate, efficient, and effective way possible
- Their impetus arises from several places:
 - A tip from a watchdog citizen
 - Abuse of public funds exposed in the media
 - An audit finding in the field

3) Attestation Engagements (Compliance Audits)

- Provide users of financial or nonfinancial information with assurance to the reliability of the related subject matter or assertion, which includes examinations, reviews, or agreed-upon procedures

Department of the Auditor General

Relevant Case Law

Dep't of the Auditor General v. State Employees Ret. Sys., 836 A.2d 1053 (Pa. Cmwlth. 2003)

- Dept. of Auditor General filed Declaratory Judgment action to determine authority to conduct performance audits of SERS and PSERS.
- SERS contended that Dept. of Auditor General had no constitutional or statutory authority to conduct performance audits of the retirement system funds.
- The question for the Court to decide was whether it must sustain or overrule Respondents' demurrer to the amended petition for review that Petitioners have the authority to conduct "Special Performance Audits" of the Funds to review the adequacy of their procedures, among other things, to select, evaluate and retain the approximately 150 external investment managers and consulting firms which are paid approximately \$250 million per year to manage and to invest the Commonwealth's retirement system assets of \$60 billion.

Department of the Auditor General

Relevant Case Law

Dep't of the Auditor Gen. v. State Employees Ret. Sys., 836 A.2d 1053 (Pa. Cmwlth. 2003)

SERS Board voted unanimously to authorize contract negotiations to proceed with the hiring of Independent Financial Services, Inc. (IFS), which was selected by the Funds to conduct their own “fiduciary/performance reviews,” or performance audits. In the meantime, by letter counsel for the Funds notified the Auditor General that the Funds would not comply with the subpoenas to produce the documents, but he offered the Auditor General an opportunity to review the work papers from the Funds’ own performance audits.

Petitioners base their authority to conduct the performance audits principally upon Article VIII, Section 10 of the Pennsylvania Constitution, Sections 402 and 403 of the Fiscal Code, and historical institutional precedent.

Respondents (SERS/PSERS) argue that based on their exclusive management, control and fiduciary obligations they have broad powers to conduct their own independent performance audits, and pursuant to this power they have engaged IFS to conduct the audits.

Department of the Auditor General

Relevant Case Law

Dep't of the Auditor General v. State Employees Ret. Sys., 836 A.2d 1053 (Pa. Cmwlth. 2003)

In deciding the case, the Court looked to other states for guidance, specifically New York's Supreme Court which upheld similar subpoenas after concluding that the audits pertained to agency activities, which had a clear and direct relationship to the financial condition and use of municipal resources, and that any such inquiry included an examination and evaluation of the efficiency and economy of the financial condition and use of municipal resources.

“Article VIII, § 10 of the Pennsylvania Constitution commands audit of the financial affairs of state-funded or financially aided entities and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth in accordance with generally accepted auditing standards.”

An audit of an agency's financial affairs connotes something more than mere examination of financial accounts or records; rather it entails broader inquiry as contemplated by the performance of audits.

Department of the Auditor General

Relevant Case Law

Dep't of the Auditor Gen. v. State Employees Ret. Sys., 836 A.2d 1053 (Pa. Cmwlth. 2003)

The Court went on to dismiss the preliminary objections asserted by SERS.

The Commonwealth Court later granted the request for summary relief, ordered SERS to provide the documents requested, and ordered SERS to cooperate with the Department in the conduct of its audits, including performance audits.

If you mess with the watchdog, you might get bit!

Department of the Auditor General

Recent Audit of School District Tax Increases

The Pennsylvania Auditor General recently audited several years worth of financial documents from school districts across nine counties. It found that these districts repeatedly raised taxes at higher-than-normal rates despite having hundreds of millions in extra cash.

These districts collectively hiked tax rates almost 40 times between 2018 and 2021. They already had some \$500 million in surplus cash among them, but they asked the state for special taxing permission anyway – and even moved that extra money around to make it look like they needed more.

On February 7, 2023, the Commonwealth Court issued a decision in *William Penn School Dist., et al. v. Pa. Department of Education*, No. 587 M.D. 2014, wherein President Judge Cohn Jubelirer found that the disparity among school districts with high property values and incomes and school districts with low property values and incomes is not justified by any compelling government interest nor is it rationally related to any legitimate government objective; and as a result of these disparities, students attending low wealth districts are being deprived of equal protection under the law.



Office of the State Treasurer

Stacy Garrity

Pennsylvania's 78th Treasurer

Sworn in on January 19, 2021

Office of State Treasurer

Purpose

The Treasurer serves as statutory custodian of the Pools of virtually all state agencies, with the responsibility for monitoring and safeguarding money and securities in accordance with State Law.

In addition, the Treasurer is entrusted with the exclusive management of and full power to invest moneys that exceed the ordinary needs of the Commonwealth that are not authorized to be invested by any other board, commission, or state official.

As noted in Fiscal Code (72 P.S. § 301, et seq.), the Treasurer has broad authority to place these moneys in any investments subject to a standard of prudence and diligence.

In addition to moneys of these Commonwealth Pools, Treasury has investment authority for moneys derived from other specialized program activities, including the PA 529 Guaranteed Savings Plan, PA 529 Investment Plan, PA ABLE Savings Program, the PA INVEST Program, Economically Targeted Investments, and other priority investments of the Treasurer.

Office of State Treasurer

Constitutional Authority

- The State Treasurer is an independent executive office created by the Constitution of the Commonwealth of Pennsylvania, Article IV, Section 1.
- The State Treasurer is prohibited from holding the office of Auditor General until four years have passed since he or she was the State Treasurer. Article IV, Section 18.
- The Treasurer, acting jointly with the Governor and Auditor General, may (i) issue tax anticipation notes so long as they mature and are payable from revenue within the same fiscal year; and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the term of the original debt. Article VIII, Section 7(a)(2).
- The Treasurer is required to pay the Commonwealth's debts and obligations—even when funds are not sufficiently appropriated by the General Assembly—from the first revenues received applicable to the appropriate fund. Article VIII, Section 7(d).

Office of State Treasurer

Statutory Authority – Fiscal Code

The State Treasurer is authorized to:

- Deposit Commonwealth money in state depositories approved by the Board of Finance and Revenue and collect interest and reports on those deposits. §§ 301, 304.
- Invest Commonwealth money, subject to an investment policy, and provide annual investment reports. The Treasurer is statutorily mandated to review its investment policy annually and post the policy and reports to its website. §§ 301.1-301.5.
- Maintain and manage securities and obligations issued by the Commonwealth. § 303. Also Maintain and manage the various state funds. § 302.
- Audit and approve all payments of Commonwealth money. No money shall be paid from any fund, except upon warrant of the State Treasurer, except for Workers' Compensation and Food Stamps. Money from those funds may be disbursed by check of the State Treasurer upon requisition of the Secretary of Labor and Industry or Secretary of the Department of Human Services, respectively. § 307.

Office of State Treasurer

Programs

Unclaimed Property. 72 P.S. § 1301.1 et seq.

- Acts as custodian of unclaimed property throughout the Commonwealth and authorized to issue a final determination on claims, which is appealable to the Commonwealth Court.

Savings Plans

- Keystone Scholars (post 2019), PA 529 Plan (education), PA ABLE Plan (disability)

Investments and Loans

- Agri-link (agricultural BMPs), INVEST (local government and non-profit), PennSEF (financing for cost/savings positive sustainable development projects)

Questions?