



The City of York Pennsylvania

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John S. Brenner, Mayor

SENATE URBAN AFFAIRS AND HOUSING COMMITTEE PUBLIC HEARING – June 11, 2009 Lancaster, Pennsylvania

“Urban Issues Affecting Third-class Cities”

Testimony of
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Good Day. My name is Michael O’Rourke. I have served as the Business Administrator for the City of York for the past nine years. Thank you Senator Yaw and the members of the Committee for holding this hearing. I also thank Senator Smucker for inviting me to testify today. I sometimes worry that in the midst of all the difficulties facing us in the current time that the plight of third-class cities will be missed. I am especially concerned because I know that York’s situation is critical and I am sure that we are not alone amongst the other cities in the Commonwealth. If there is no reform to address the problems that plague us, it will not be long till York joins the ranks of those municipalities designated as distressed under Act 47.

The City of York is a third class city of just under forty one thousand people located in south central Pennsylvania. York is the county seat of York County and is the urban core of a metropolitan area of about three hundred fifty thousand people. Approximately twenty thousand people per day commute to York City for work.

York is governed under the Council-Mayor form of government pursuant to the Third Class City Optional Charter Law. The elected officials of the City are the mayor, five city council members, a treasurer and a controller. All are elected at large for four-year terms. Presently, a six member cabinet is appointed by the mayor, and subject to confirmation by council, and includes the Business Administrator, the Director of Community Development, the Director of Economic Development, the Director of Public Works, the Police Commissioner and Chief of Fire and Rescue Services.

The City employs about three hundred fifty regular full time and about fifty seasonal and temporary workers. Five unions represent the City workforce: the Fraternal Order of Police (FOP); the International Association of Fire Fighters (IAFF); the York Public Employees Association (YPEA); the York City Employees Union (YCEU) and the International Brotherhood of Electrical Workers (IBEW). The professional, supervisory and managerial employees are not represented by a labor union.

The City of York is on the brink of financial failure, as are many of the 3rd class cities in Pennsylvania. We are faced with the combined dilemmas of costs that rise faster than the rate of inflation and revenue sources that are static. Further burdening the city's finances are growth in public safety labor obligations that we cannot get any control of due to Act 111 procedures, and a crushing burden of tax exempt real estate in the city. Faced with these dilemmas the City of York has made major reductions in costs by reducing staffing in all departments but Police and Fire and we have taken action to increase revenue including raising the real estate tax rate in seven of the last nine years. We have implemented many efficiencies and have modified and eliminated programs where necessary.

The city is a participant in the Commonwealth's Early Intervention Program. In 2005 we hired Public Financial Management to develop a financial history of the City and to prepare a five-year financial forecast. PFM's forecast predicted that if no actions were taken that the city's General Fund would be at an annual deficit of \$8 million by 2010. The report included recommendations to reduce expenditures and raise revenue. The recommendations included the following: Negotiate a pay freeze for all employees for 2006 and lower pay increases for employees for subsequent years; hire benefits consultant to redesign health insurance plan, implement a parking tax; search for market based revenue options.

The City has reviewed, discussed and debated all of the recommendations. We negotiated for two years to get a reasonable wage structure and health benefits from the unions, although the IAFF is still not finalized and the arbitration panel in the FOP negotiations, in an effort to placate the union, has seriously complicated our employee health program. We have implemented a parking tax and restructured the employee health care plan. The city even adopted a policy of increasing the tax rate and rates for fees and fines each year by the approximate rate of inflation. All of these actions have only pushed the deficit a little further into the future. However, at the same time, some actions are viewed as making the city less attractive to business and residents.

Each year the City of York borrows money in January to cover operating expenses until the bulk of the Real Estate Tax money comes in during April and May. If the City does not borrow in January then sometime before April the City would run out of money. I have noted that each year since 2001 the date on which the City would run out of money has been closer to January 1 than the year before. The City's MMO is about \$5.2 million. Each year around May 30 we begin paying \$500,000 per month until December when we pay the balance due for the year. In September 2008 we projected that if we continued on our budget schedule that the City would run out of money before the end of the year. We stopped making our monthly payments to the Pension fund. If we had continued to make our monthly pension payments of \$500,000 the City would have run out of cash in November 2008. As it turned out, the balance of \$3+ million owed to the pension fund for 2008 was not paid until January 2009 and

2009 Tax Anticipation Note proceeds were used to supplement general fund dollars to pay the MMO. In effect, money borrowed to pay 2009 operating expenses was used to pay 2008 operating expenses.

The City's annual budget for 2009 is \$94,670,602 including inter-fund transfers. The City's financial activity is conducted in twenty-five funds. The largest fund, by far, is the General Fund. The 2009 General Fund Budget is \$36,628,441. The General Fund is where public safety and public works activities are accounted.

67% of the General Fund is spent on public safety, police and fire. That percentage is up from 60% in 2000. The Fire and Police Departments employ about 223 full time staff including one hundred twelve police officers and Sixty-eight fire fighters. The remaining 33% is spent on elected and appointed officials, Public Works, administration and the Community Development and Economic Development Departments.

50% of the General Fund revenue comes from taxes: real estate, earned income, business privilege and mercantile, and municipal services taxes. 32% of the General Fund revenue comes from real estate tax. The city tax base value is about \$1.6 billion. About \$960 million is taxable and the rest is tax exempt. In excess of 35% of the tax base value of the City is tax exempt. The tax-exempt property includes government, utility, churches, social service agencies, hospitals and post secondary schools. The large percentage of tax-exempt real estate in our tax base means that more than 50% of each taxpayers tax bill is due to the tax-exempt property not paying any taxes. This level of tax exempt property in the city is especially burdensome to a population with a median household income of about \$26,000. This is far below the median household income of the other municipalities in York County. The practical result is that the real estate tax payers of the City of York subsidized, medical services, religious practice, county government service and social services to every non city resident who uses those services. And these subsidized services are not just for York County residents, or even Pennsylvania residents. Many of the institutions serve people from all over the country.

The real estate tax rate in the City of York has gone from 9.73 mills in 2001 to 15.64 mills in 2009. The last reassessment was implemented in 2006. Attached is a chart showing local tax and income information for all of the municipalities in York County in 2006. As you can see, the Real Estate tax rate for York City far exceeds the next highest local tax rate.

City government services are labor intensive. Hence labor costs make up about 75% of general fund expenditures. After wages and salaries the highest line item expenses are pension and health insurance. The 2001 MMO for the whole city workforce was \$546,042. The 2009 pension MMO for the entire city workforce is \$5,203,433. The share of the MMO for the police and fire pension funds are \$3,120,389 and \$1,785,031 respectively for a total public safety MMO of \$4,905,420, or 94.25% of the entire pension contribution obligation for 2009. As of January 1, 2007 the total unfunded liability in the Fire and Police Pension Funds was in excess of \$45 million dollars. As a result of the recession and recent declines in the stock market, the unfunded liability as of January 1, 2009 will be significantly larger.

Employee health insurance costs have risen dramatically over the past ten years. The City maintains a self-funded employee health insurance program. In 2000 the total cost of that program was \$2,727,703. The cost for 2008 was \$7,475,189. This is a 275% increase over eight years. In 2008 York's expenditures for employee health care exceeded budget by over \$800,000 and it is likely we will see a similar excess of expenditures over budget for 2009. Our GASB 45 analysis shows that the city's obligation for retiree health care is over \$60 million. Again, due to the early age of retirement and the rich benefit plan almost the entire obligation is for public safety retiree health insurance.

Every year the cost of providing public services rises in response to global and local pressures. The prices for fuel, materials, equipment, utilities and services increase based on demand and circumstances in the middle east, in the far east and in Mexico and Louisiana. The same price pressures increase our cost of labor, the single largest category of expenditure for the city. Added to these increase pressures of the world economy is the binding arbitration process of Act 111, the process that is used to resolve grievances and contract impasse of negotiations between public safety employees and their municipal employers. Efforts to rein in the growth of pension and health care costs are thwarted by arbitration awards that are made, seemingly, with no regard to the ability of the taxpayers in a community to bear the increased costs of awards.

The negative impact of the Act 111 arbitration system cannot be overstated. Power corrupts and absolute power corrupts absolutely. Labor arbitrators in Pennsylvania, especially under Act 111, possess near absolute power. Absolute power is power that is not subject to review or limitation. In Pennsylvania labor arbitrators can misinterpret contracts, misapply the law and find facts unsupported by evidence and there is no recourse available to the injured party. For example, in a case involving a York City police officer, an arbitrator voided two health care plan documents that had been in effect for over fifteen years in order to get to a plan document that had not been in use for over fifteen years so that he could order the City to pay \$150,000 in health care claims for injuries sustained by the officer while driving drunk. His rationale was that the plan documents were never bargained over even though the president of the Union admitted that he had been given a copy of the plan document over six years earlier. In another case an arbitrator found that a phrase that made the City's health care plan secondary to Medicare after age 65 and which provided no reduction in benefits for the retiree, to mean that the City was obligated to pay the retirees' Medicare premiums. The amount that the retirees pay for retiree health care is less than the city pays for their Medicare premiums.

Arbitrators appear reluctant to craft awards that would support city government officials' efforts to slow the growth in expense. On the other hand they appear willing to strain reason to get to a conclusion allowing them give ever richer benefits to public safety personnel without regard to the communities ability to pay for the benefits.

The crux of the revenue generating problem is that the methods by which we generate revenue to pay for public services is antiquated and inadequate and it is only a matter of time till many more of the municipalities in Pennsylvania will face the same budget problems as the Third-class cities. The primary source of general revenue is the real estate tax. There are three ways for the real estate tax base to generate more revenue: growth in the tax base value by new development, growth in the value of the tax base by market forces, and increase of the real estate tax rate.

Most cities are developed to their limits. So growth in the tax base by development must occur through redevelopment efforts. Overall expense for the city grows at about 7% per year. The current taxable tax base value is just under one billion dollars. For the real estate tax base to grow adequately to keep up with the growth in expense we must start at producing \$70 million per year in taxable redevelopment. Notwithstanding Herculean efforts and significant investment by the Commonwealth, the City of York has not added \$70 million in taxable new real estate value in the past seven years.

Tax base value growth by market forces occurs at varying rates from year to year. But in Pennsylvania that tax base value growth is only recognized when there is a countywide reassessment. Reassessments only occur, if we are lucky, every seven to ten years.

Finally we have the increased revenue from increases in the tax rate. Nobody wants that!

The solutions include a balanced set of taxes to generate the money needed to deliver public services. The tax package should include a wealth tax, i.e. real estate tax, a consumption tax, i.e. a sales tax, and an income tax, i.e. personal income tax rather than an earned income tax. Moreover, the income tax should be paid at the rate of 50% each to the municipality in which you work and in which you reside. The mix is important. Real estate tax grows slowly, but it is reliable and does not fluctuate with every twitch in the economy. Sales and income taxes do fluctuate with the economy, including growing with the economy.

In his budget address the Governor proposed a local option sales tax. This is a tax that would require the county to adopt it and would generate revenue specifically directed at reducing real estate tax, paying for public safety and funding shared municipal services.. This tax has the support of every local government association including the boroughs, townships, cities and counties. Philadelphia already has a local sales tax.

Philadelphia and Pittsburgh both have a retail alcoholic drink tax. Because many cities are home to destination venues such as entertainment facilities, restaurants and nightclubs that serve alcohol by the drink, and because the presence of such facilities increases the burden on public safety and public works, this would be an appropriate tax to make available to cities.

In summary, the City of York is facing an impending financial failure and the process of seeking financial distress status under Act 47 is imminent. The City has already achieved several of the criteria for distressed status including failure to pay the MMO in the year due and running chronic deficits. It may be that on the horizon are the more drastic criteria, missing payroll and missing debt payments. The most ironic thing is that Act 47, convoluted and inadequate as it is, and offering no relief of significance, is the only recourse short of bankruptcy.

We have concluded that our financial condition has been caused by a combination of factors including an antiquated and inadequate revenue generating mechanism, a broken labor relations process under Act 111 and a disproportionate share of tax exempt property that creates over a 50% increase in taxes for all local taxpayers. We propose that a balanced and diverse mix of taxes: Real Estate Tax, Personal Income Tax or the current Earned Income Tax, paid half each to the municipality of residence and municipality of work, and a Sales tax structured as the current proposal that is supported by all local government associations, be made available to all municipalities in Pennsylvania.. Tax exempt entities that serve populations outside the municipality in which they are located should be required to pay local municipal and school taxes in proportion to the local population they serve versus the non-local population. The Act 111 public safety employee labor relations law should be revised to provide for random selection of adjudicators, mandatory consideration of the economic conditions of the employer and recourse for review when there is alleged to be a misapplication of law, findings unsupported by evidence or determinations contrary to the provisions of a contract.

Thank you for listening. I will try to answer any questions you have for me.

