



# PIRMA

Pennsylvania Intergovernmental  
Risk Management Association

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# UPDATE

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[www.pirma.org](http://www.pirma.org)

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## Distracted Driving is a Choice Help Your Drivers to Choose Safety

By John Johns, Loss Control Manager

Safe driving involves two equally important elements - driver skills and driving attitude. A driver may have the skills required to operate a vehicle. They may have no problem with maneuvering the vehicle. However, if that same driver fails to understand the importance of practicing safe driving techniques, they will crash or cause a crash. Distracted driving is an attitude. Use of electronic devices, eating, reading, and loss of focus are all examples of driver distractions.

Physical distractions, mental distractions, interior and exterior distractions are all examples of why drivers lose focus when they are behind the wheel.

Distractions are the leading cause of motor vehicle crashes and the number one distraction is cell phones. The use of a cell phone while driving is a very high-risk behavior with significant impact on society because of the vast number of people engaged in the behavior and the cognitive distractions the driver experiences when engaged in a cell phone conversation (verbal or text messaging).

Please see *Distracted Driving* on page 4

## Carol Sambol, Board Member

PIRMA Board member, Carol Sambol passed away in September. Carol was an original member of the PIRMA Board and served as the Board's Chairman from 1998 to 2006. A tireless advocate for local governments, Carol's leadership and conviction were instrumental in PIRMA's membership growth and financial stability. Carol served on the Baden Borough Council for 37 years. Carol was a Past President of the Pennsylvania State Association of Boroughs (PSAB) and served on its' executive committee. Carol will be greatly missed by her family and friends.

## Commonwealth Court Shed Light Where the Sun Don't Shine

By Michael G. Crotty, Esquire & Ryan M. Jennings, Esquire  
*Siana, Bellwoar & McAndrew, LLP*



The Pennsylvania Commonwealth Court recently concluded that a local township board of supervisors did not violate the Sunshine Act (the “Act”) (65 Pa.C.S. §§ 701- 716), by holding closed-door meetings with various parties for the discussion and exchange of ongoing litigation-related information. The Commonwealth Court’s decision allows such private meetings, so long as they are solely for informational purposes; once the line from informational meetings to deliberative meetings is crossed, a Sunshine Act violation would presumably exist.

The decision, Smith v. Township of Richmond (Pa. Cmwlth. 2012) (unreported), involves an appeal from the Berks County Court of Common Pleas (trial court), which denied Smith’s request for a declaratory judgment that the Richmond Township Board of Supervisors violated the Sunshine Act. The Township has been engaged in litigation with the Lehigh Cement Company and the East Penn Valley Residents Group (“Citizens Group”) over the expansion of Lehigh Cement’s limestone quarry. Following the addition of a new Township Supervisor and appointment of a new Township Solicitor, the Board of Supervisors decided to conduct a series of meetings with the interested parties, including representatives of neighboring Maxatawny and Maiden Creek Townships, the Citizens Group and Lehigh Cement.

At all points in time, the Township Solicitor announced, explained and maintained that the Supervisors would not be deliberating on, conducting, or making any decisions on agency business at any of their four (4) executive sessions. Instead, the sole purpose of each executive session was for the Board of Supervisors to ask questions of the invited persons and to gather information regarding the potential impact of a quarry operation in Richmond Township. Each Supervisor, as well

as the Township Solicitor testified that the sole purpose of the meetings were informational and did not involve deliberations nor result in any official action being taken.

The basis for Smith’s challenge and declaratory judgment action against the Township revolved around his contention that the closed-door meetings violated the Sunshine Act in that the meetings did not fall within any of the exceptions enumerated in the Act itself. Smith asserted that while an official vote may not have taken place at any of the four (4) meetings, “deliberations,” as defined in the Sunshine Act, did take place. Smith also pointed to Trib Total Media v. Highlands School District, where the Commonwealth Court held that the presence of a third party nullified the executive sessions exception. The Commonwealth Court disagreed, concluding that the purpose of each of the four (4) meetings was not to “make a decision,” but to instead conduct necessary fact-finding.

Plaintiffs have the burden of proving that official action was taken or that “deliberations” took place at a private meeting with regard to the fact-intensive nature of Sunshine Act litigation. Unable to meet his burden, the Commonwealth Court affirmed the trial court’s finding.

The lesson of this matter, together with the Trib Total Media matter is clear; that the law on this issue is unclear and that you should consult with your solicitor as to any such meetings. If you have any questions about the impact of this ruling, the attorneys at Siana, Bellwoar and McAndrew, LLP would look forward to addressing them with you.

## Act 13 Impact Fee Distributions

### *(Receiving and Appropriating the Funds)*

Recently, municipalities in counties with unconventional natural gas wells drilled prior to January 1, 2012 received their first Act 13 impact fee disbursements. Some of these disbursements were quite substantial reaching as high as \$500,000 and even higher in a few cases. There are a couple of things to keep in mind in regard to receiving and appropriating these funds.

When receiving the distributions, it is important to contact your insurance agent and inquire about increasing the bond limit for the secretary/treasurer. Especially with townships, where the 2<sup>nd</sup> class township code states the “bond shall equal the highest amount of township funds estimated by the board of supervisors to be available to the township treasurer at any time during the current year.” Even with boroughs where their code doesn’t require a set amount, it would be prudent to look at your bond amount and increase it if necessary. One of the most basic responsibilities of governing is the fiduciary obligation to protect tax-payers from theft of public funds.

When appropriating the funds, municipalities must only spend them on expenses outlined in the law. These items include:

- Roadways, bridges, and public infrastructure
- Water, storm water and sewer systems
- Emergency preparedness and public safety, including law enforcement and fire services, hazard material response, and 911
- Environmental and recreation programs, including trails, parks, open space, floodplain management, and agricultural preservation
- Preservation and reclamation of surface and subsurface waters and water supplies

- Tax reductions, including homestead exclusions
- Deposits into a capital reserve fund as long as the funding is eventually used for an allowable purpose
- Availability of safe and affordable housing
- Records management and information technology
- Delivery of social services
- Judicial and legal services
- Career and technology centers for training related to oil and gas industry
- Planning initiatives under Municipalities Planning Code.

Act 13 states that the funds do not have to be spent by a specific date; however, they must be appropriated by April 15<sup>th</sup> of every year. If a municipality decides to set the funds aside in a reserve fund, when they do spend the money, it must be spent on the items above. To get more information regarding Act 13 of 2012, you can go to the Pennsylvania Department of Environmental Protection’s website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) and click on “oil and gas.”



*Distracted Driving* from page 1

Safe driving is the first priority. The first responsibility is to pay attention to driving. **Never** allow cell phone or phone conversation to distract from concentrating on driving.

However, there are many other conditions that are just as important to consider when operating a motor vehicle. Examples are (but not limited to) the following:

- Staying focused on the task at hand (driving)
- Securing objects within the vehicle (this includes people)
- Adjusting driving to conditions
  - Scan the horizon
  - Scan side to side
  - Scan to the rear
- Know the escape routes in the event of an emergency
- Maintain safe following distances



Remember - the most important task is to arrive at the destination safely. Driving safely without distractions should always be at the top of the priority list.

## Update to the Child Labor Law

The Pennsylvania Child Labor Law was recently updated. Following is the current section of the law as it pertains to volunteer emergency service organizations. This includes volunteer fire and ambulance companies.

### SECTION 7 Minors Serving in Volunteer Emergency Service Organizations

#### A. General Rule

An individual who is 14 years of age or older who is a member of the volunteer emergency service organization\* may participate in training and emergency service activities except as follows:

- (1) A minor may not operate a truck, ambulance or other official fire vehicle.
- (2) A minor may not operate an aerial ladder, aerial platform or hydraulic jack.
- (3) A minor may not use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets or acetylene cutting units.
- (4) A minor may not operate the pump of a fire vehicle while at the scene of a fire.
- (5) A minor may not enter a burning structure under any circumstance including a training exercise.
- (6) A minor may not engage in firefighting activities unless all of the following apply:

Please see *Update to Child Labor Law* on page 5



*Update to Child Labor Law from page 4*

- (i) The minor is 16 years of age or older.
- (ii) The minor has successfully completed a course of training equal to the standards for basic firefighting established by the State Fire Commissioner and the Department of Conservation and Natural Resources.
- (iii) The minor is under the direct supervision and control of the fire chief, an experienced line officer or a designated forest fire warden.

**B. Additional Limitations**

In addition to the limitations set forth under Subsection (A), the activities of individuals more than 13 years of age and less than 16 years of age shall be further limited as follows:

- (1) An individual who is more than 13 years of age and less than 16 years of age shall only be permitted to perform the following activities:
  - (i) Training
  - (ii) First aid
  - (iii) Cleanup service at the scene of a fire, outside the structure and after the fire has been declared by the fire official in charge to be under control.
  - (iv) Serving food and beverages.
- (2) An individual who is more than 13 years of age and less than 16 years of age may not do any of the following:
  - (i) Operate high pressure hose lines except during training activities. A high pressure hose line is any water hose used for fire suppression with a pressure greater than 150 PSI, any air hose with a pressure greater than 100 PSI and any hydraulic

hose used for rescue tools with a pressure greater than 1,000 PSI.

- (ii) Ascend ladders except during training activities.

**C. Other Prohibited Activities**

The department may prohibit other activities that it deems hazardous to the health of minors through regulation.

**D. Other Provisions**

- (1) Except as set forth under this subsection, this section does not supersede any other provision of this act or any regulation promulgated under this act.
- (2) A minor may continue serving in answer to a fire call until excused by the individual acting as chief of the fire company if the minor:
  - (i) Is 16 years of age or older;
  - (ii) Is a member of a Volunteer Fire Company; and
  - (iii) Answers a fire call while lawfully employed.
- (3) An individual who is 14 or 15 years of age may engage in training or firefighting activities permitted under this section until 10 p.m. before a school day if the minor:
  - (i) Is a member of a Volunteer Fire Company; and
  - (ii) Has the written consent of the minor's parent or legal guardian.

\*A volunteer emergency service organization is a volunteer fire company, volunteer ambulance organization, volunteer rescue organization, a volunteer forest firefighting organization or a volunteer organization of emergency service personnel who are expected to respond to medical emergencies or large-scale disasters.

## PIRMA Service Providers

Marketing and Loss Control - H.A. Thomson Company  
General Counsel - Siana, Bellwoar & McAndrew, LLP  
Auditing - Plante & Moran, PLLC

Claims Service Provider - Integrated Risk Management

Administration - American Risk Pooling Consultants

Investment Manager - Wilmington Trust

## PIRMA's Newest Members

- Turbotville Borough & Municipal Authority, Northumberland County
- Hollenback Township, Luzerne County
- Upper Salford Township, Montgomery County
- Sugar Grove Township, Warren County
- Montour Area Recreation Commission, Montour County

Over 650 Members throughout the Commonwealth!

## Comments & Questions

Please send your comments or questions to Andrew DiProspero at [adiprospero@hathomson.com](mailto:adiprospero@hathomson.com).