

however, the Application consists of the form as supplemented by the statements and allegations required by the requesting party pursuant to 53 P.S. § 11701.203.

3. Denied as stated. The Agency's Application, pursuant to Act 47, requires that an applicant identify one or more of the criteria for distressed status. or if the requesting party is the municipality, the applicant may state why the manifestation of the criteria for distressed status is imminent and inevitable. 53 P.S. § 11701.203

4. Admitted in part. Denied in part. It is admitted that on October, 20, 2010, an Act 47 administrative hearing was commenced. It is denied the hearing is not yet concluded. The Act 47 hearing has concluded, although the record remains open.

5. Admitted in part. Denied in part. It is admitted only that no member or representative of the Harrisburg Authority (hereinafter, "THA") offered testimony at the administrative proceedings on October 20, 2010. Intervenor's allegations that defaults of THA are "attributed" to the City are denied. If anything, the defaults of the City are attributed to the City's inability to fund debt service sufficient to meet its obligations under the Guaranty Agreements.

6. Denied. The allegations contained in Paragraph 6 state a conclusion of law to which no response is required. To the extent a response is necessary, the same are denied. By way of further response, THA's testimony regarding the imminence and inevitability of default is irrelevant insofar as the City already defaulted on guaranty obligations on THA's Resource Recovery Facility (RFF) Revenue Bonds and Notes. as stated under criterion (3) in the Application. In addition. as indicated in Paragraph 5. the City is not able to fund its guaranty obligations which have already become due. That fact is unrelated to and unaltered by any testimony that THA can provide regarding its

financial situation. Therefore, the testimony of THA is irrelevant to the City's inability to fund its debt service obligations.

7. Denied. The allegations in Paragraph 7 state a conclusion of law to which no response is required. To the extent a response is necessary, the same are denied. By way of further response, THA is not a party to the proceeding; nor have its due process rights been denied. THA members and representatives were welcome to testify at the hearing as were other interested participants.

8. Denied. The contents of Paragraph 8 do not contain any factual allegations to which a substantive response is required. To the extent that a response is required, the same are denied.

9. Denied. The allegations in Paragraph 9 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied. By way of further response, the City denies that any party was deprived of the right to be heard.

10. Admitted in part. Denied in part. It is admitted that no member or representative of THA offered oral testimony at the hearing. The City is not able to confirm or deny whether any THA member or representative appeared at the hearing or whether any written testimony by a THA member or representative was provided.

11. Admitted in part. Denied in part. It is admitted that whether an imminent and inevitable manifestation of statutory criteria exists is a factual issue for Agency officials at an Act 47 hearing. The remaining allegations in Paragraph 11 state a conclusion of law to which no response is required. To the extent an answer is required, the same are denied. By way of further response it is denied that THA members or representatives could have provided material, relevant or greatly probative testimony regarding whether

the City meets the criteria under 53 P.S. § 11701.201 or whether manifestation of section 201 criteria is imminent and inevitable under 53 P.S. § 11701.203. Irrefutable evidence relating to whether the City met the criteria under 53 P.S. § 11701.201 or whether manifestation of section 201 criteria was imminent and inevitable under 53 P.S. § 11701.203 was sufficiently provided at the hearing such that the Agency can make a determination of distressed status without the need for testimony from THA members or representatives, as stated in the City responses to Paragraphs 5 and 6, which the City incorporates herein. Furthermore, THA had an opportunity to intervene as a party to the proceeding or appear voluntarily to provide testimony, but chose not to. Additionally, Intervenor had sufficient notice prior to the hearing to request subpoenas of THA members or representatives to appear at the hearing and provide testimony if it chose to.

12. The contents of Paragraph 12 do not contain factual allegations to which a response is required. To the extent a response is required, the same are denied.

13. Denied. The allegations in Paragraph 13 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied. By way of further response, it is denied that any party is denied the due process of law by the Agency's carrying out of the mandates of Act 47 concerning the scheduling of a hearing. On the contrary, the mandates of Act 47 serve to ensure, protect and preserve the fundamental due process rights of all parties while allowing the purpose of the Act to be carried out in response to the petition seeking a Determination of Distress.

14. Denied. The allegations in Paragraph 14 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied. By way of further response, it is denied that Act 47 is silent as to when a hearing must be

concluded or that “held” is synonymous with “commenced.” The requirement that a hearing be “held” implies a beginning and an end to the hearing. By way of further response, it is denied that the principles that underlie the requirement to commence a criminal trial within 180 days are the same principles that form the basis of the 30 day hearing requirement under Act 47. The right to a speedy trial exists primarily to protect a criminal defendant’s right to be free from prolonged pretrial incarceration while preserving the state’s ability to detain dangerous individuals and prosecute cases in an orderly fashion. *See Commonwealth v. Dixon*, 907 A.2d 468, 473 (Pa. 2006). The 30 day hearing requirement under Act 47 seems to have the purpose of allowing a distressed municipality facing imminent danger of adverse financial consequences the ability to have a speedy determination of their status, not merely a speedy commencement of proceedings.

15. Denied. Robert Kroboth, Interim Business Administrator/Interim Chief of Staff testified that the City is currently far short of the amount of cash necessary to meet its payroll obligations for the week of October 25, 2010. The City must have sufficient cash to meet payroll by the morning of Wednesday October 27, 2010 or the City’s employees will go unpaid. Additional testimony indicated that the City is behind in its payments for health services to its employees, which services could be jeopardized with the City making at least a partial payment of the overdue amounts in the near future. A grant of distressed status could result in immediate financial assistance to help the City meet its payroll obligations and pay for health services, both of which are critical to its employees’ health and wellbeing. Therefore, in order to prevent immediate and

irreparable harm to City employees and their families, an immediate determination by the Agency is imperative.

16. Denied. THA had the opportunity to appear and present testimony at the Act 47 Hearing relative to the matters referenced by Intervenor in Paragraph 16, and failed to do so. Furthermore, Intervenor had sufficient notice prior to the hearing to seek THA's testimony at the hearing. By way of further response, the City submitted its Application attesting to the fact that the City had defaulted on certain Guaranty obligations. Mr. Kroboth also supplied testimony to the fact that the City had defaulted. The fact that THA failed to make payments when due, and that the City failed to make guaranty payments is irrefutable. Furthermore, any testimony that THA could provide in the form of "details of the future scope of bond payments, income projections and defenses raised to any aspect of any of the guaranteed debt," is irrelevant for the reasons stated in the City's responses to Paragraphs 5 and 6, which are incorporated herein. Additionally, testimony of THA cannot have any bearing on whether the City has met the criteria due to its imminent inability to make payroll or fund self-insured healthcare obligations.

17. Denied. The contents of Paragraph 17 do not contain factual allegations to which a response is required. To the extent a response is required, the same are denied. By way of further response, the only party compelled to give testimony according to the statute is the requesting party. 53 P.S. § 11701.203(e).

18. Denied. The contents of Paragraph 18 are a request for relief, which the City opposes. By way of further response, the City avers that the prejudice it will suffer by delaying the proceedings substantially outweighs the benefit of any testimony that can be provided by THA members or representatives. Furthermore, the basis for Intervenor's

request for subpoenas, that THA was denied its due process, is without merit for the reasons set forth in the preceding paragraphs. Additionally, issuance of a subpoena, which is a compulsory instrument, is not an appropriate remedy for denial of due process, even if due process had been denied.

19. Denied. The allegations in Paragraph 19 state a conclusion of law to which no response is required. To the extent a response is required, the same are denied.

20. Denied. For the foregoing reasons, the requested relief should be denied.

WHEREFORE, Applicant, City of Harrisburg, respectfully requests that the Agency enter an Order denying Plaintiffs' Motion to Issue Subpoenas to Compel Testimony of Board members of the Harrisburg Authority, their bond counsel and litigation counsel.

Respectfully Submitted,

CITY OF HARRISBURG

By. 

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Attorneys for Applicant,

City of Harrisburg

Date: October 22, 2010

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

IN RE:

CITY OF HARRISBURG

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Request for Determination of
Distress Under Act 47

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of October, 2010, served a true and correct copy of the foregoing motion via facsimile transmission and United States Postal Service, first class postage prepaid and properly addressed to the following:

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Charles Brown, Esquire
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By.


Jason M. Hess

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

In Re: City of Harrisburg

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Agency No. _____

Request for Determination of
Distress under Act 47

ORDER

NOW, this _____ day of October, 2010, upon consideration of the *Response of Applicant, City of Harrisburg, to Motion of Intervenors, Debt Watch Harrisburg and Neil Grover, Pro Se, to Compel Testimony of Board Members of The Harrisburg Authority, Their Bond Counsel and Litigation Counsel*, the Intervenors' Motion is HEREBY DENIED. The Act 47 Administrative Hearing record will be closed so that the Secretary may proceed to issue an administrative determination of whether the Applicant, City of Harrisburg, is financially distressed.

By: _____
Fred Reddig, Presiding Officer