



Citizens for Pennsylvania's Future
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July 2, 2018

Christina A. Cassotis, Chief Executive Officer
Allegheny County Airport Authority
Landside Terminal, 4th Floor, Mezzanine
PO Box 12370
Pittsburgh, PA 15231-0370

Ms. Cassotis:

I write to you on behalf of PennFuture and its members who are concerned about the Allegheny County Airport Authority's (Authority) misuse of revenue resulting from the lease of mineral rights beneath the Pittsburgh International Airport (PIT) and Allegheny County Airport (AGC).

As explained in more detail below, under Article I, Section 27 of the Pennsylvania Constitution the County and Authority, as with other forms of Commonwealth government, hold public natural resources in trust for the people of Pennsylvania. Any revenue from the sale or lease of those public natural resources, including oil and gas, is governed by Section 27 and must be used solely to further the rights guaranteed citizens under Section 27, namely, to further the public's right to clean air, pure water and to the preservation of the natural, scenic, historic and esthetic values of the environment. The Authority's diversion of revenue from the leasing and extraction of oil and gas resources for purposes other than those established under Section 27 violates the Authority's obligations under Article I, Section 27 of the Pennsylvania Constitution.

According to the Authority's Annual Financial Report, in February 2013 the Authority executed a lease with CNX Gas Company LLC (CNX) for the exploration and development of natural gas on the Pittsburgh International and Allegheny County Airport properties. Upon execution, the Authority received a "bonus payment" of \$46.3 million. The Authority began receiving royalty payments from mineral production during 2016. For the year ending December 31, 2016, the Authority received \$2,839,342 in royalty payments, and for the year ending December 31, 2017,

the Authority received \$13,247,598 in royalty payments. Separately, the Authority received surface and ground rent payments of \$857,000 in 2016. The Authority's financial audit indicates that the Authority will continue to receive additional surface and ground rent payments as well pads on the property are completed. The audit states that this revenue from the development of oil and gas resources is being used by the Authority "to reduce airline rates and charges and for capital expenditures ... at the Airport."

Article I, Section 27 of the Pennsylvania Constitution provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. **As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.**

On June 20, 2017, the Pennsylvania Supreme Court decided its second notable case in the past five years interpreting this constitutional provision. The case, *Pennsylvania Environmental Defense Foundation v. Commonwealth (PEDF)*¹ challenged whether it was lawful for the General Assembly to use revenue from oil and gas drilling on public lands for a variety of public purposes in an effort to balance the state budget. The Court held that Section 27 created a public trust over public natural resources, of which oil and gas was a part, and that the Commonwealth² must manage those resources as a trustee, and not a proprietor, for the benefit of the people. The Court further held that that any proceeds from the disposal of public trust resources must remain a part of the trust corpus and be used to further the purposes of the trust. That is, the revenues from the sale of public natural resources must be used to protect the people's right to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment.

While we appreciate that there are public benefits associated with reduced airline rates and charges, and improvements in airport facilities, the Supreme Court expressly held in *PEDF* that

¹ 161 A.3d 911 (2017).

² Section 27 is a constitutional charge that must be respected by all branches and levels of government. *Robinson Township v. Commonwealth*, 83 A.3d 901, 952 (2013). Therefore, duties required of the Commonwealth equally constrain its political subdivisions like Allegheny County and the Authority.

revenue from the disposition of public trust resources must remain a part of the trust corpus and may not be expended to support projects that do not further the interests protected by Section 27, even though the projects may further some other legitimate public purpose. Other uses, the Court said, are beyond the scope of the discretion conferred on the trustee by Section 27. The Authority's use of revenue from the depletion of oil and gas resources to reduce airline rates and charges, and to make general capital improvements at the airport, do not further the interests protected by Section 27, and, as such, are unconstitutional.

Furthermore, as a fiduciary, the Supreme Court said that the trustee must act towards the public's natural resources with prudence, loyalty, and impartiality. The duty of loyalty imposes an obligation to manage the trust corpus in a manner that furthers the trust's purposes for its beneficiaries. The Court stated it is the trustee's obligation to demonstrate compliance with this constitutional obligation. As a result, the Court propounded that if any trust funds were to be ultimately moved into the General Fund, an accounting would be necessary to ensure that the funds were ultimately being used in accordance with the trustee's obligation to conserve and maintain the public's natural resources.

For these reasons, PennFuture requests: (1) that the County and Authority immediately cease using revenue from the sale of the public's oil and gas rights on County property, and specifically at the Pittsburgh International and Allegheny County Airports, for purposes not authorized by Article I, Section 27 of the Pennsylvania Constitution, and (2) that such revenue be assigned to a special account, such that the public can readily ensure that the County and Authority's use of that revenue does not violate its obligations under Section 27.

PennFuture believes that there are many ways that the Authority could use this revenue in compliance with its obligations under Section 27. To that end, I refer you to this letter from Larry Schweiger, president emeritus of PennFuture, and past president of the National Wildlife Federation, published in the Pittsburgh Post-Gazette on April 20, 2018. The letter outlines some types of development that would be consistent with the interests protected by Section 27. <http://www.post-gazette.com/opinion/Op-Ed/2018/04/20/Make-Pittsburgh-s-airport-even-smarter/stories/201804200004>.

PennFuture would appreciate an opportunity to discuss this matter in order to avoid litigation. If you desire to meet, please contact me **on or before July 13, 2018**. Thank you for your attention to this important matter.

Sincerely,

/s/ George Jugovic Jr.

George Jugovic, Jr.
Vice President of Legal Affairs

cc: County Executive, Rich Fitzgerald
County Controller, Chelsa Wagner