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May 15, 2017

Honorable Members of the
State College Borough Council
243 South Allen St.
State College PA 16801

Via electronic mail and in-person during public comment, May 15 Council meeting

Re: Notice of Intent to Sue for Unlawful Attempted Delegation of Taxation Powers

Dear Councilmen Daubert, Myers, Barlow and Brown, and Councilwomen Dauler, Lafer and Engeman:

I write on behalf of myself and other taxpayers similarly situated to provide notice of my intent to sue the Borough of State College and you in your official capacities as elected legislators, for unlawful attempted delegation of taxation powers. For reference, attached is a copy of the February 9, 2017 Joint COG Parks Capital Committee and Centre Region Parks & Recreation Authority meeting, at which I informally notified the Parks Capital Committee and Authority Board of my intent to sue.

For the past 10 months, since July 25, 2016, the Centre Region Council of Governments and its participating elected municipal legislatures, through General Forum advisory committees and the municipally-appointed Centre Region Parks & Recreation Authority, have been reviewing options for moving forward with the proposed Whitehall Road Regional Park ahead of two June 1, 2017 deadlines: the deadline for final “drawdown” of a loan to finance the project, and the expiration of municipal guarantees to pay back the principle and interest of that loan through taxation of Centre Region taxpayers in the amount of roughly \$6.2 million.

In the course of these public discussions, I reviewed prior General Forum votes regarding continued funding for the proposed project, along with the November 2006 Regional Parks “Articles of Agreement” and June 2011 Fulton bank loan contract documents.

The November 27, 2006 Regional Parks Articles of Agreement state, in pertinent part:

- Section 7.3: “Proposed expenditures for Regional Parks Capital Projects shall be determined each year as part of the COG Budget process. The Participating Municipalities may authorize a committee...to recommend an annual appropriation.”
- Section 7.5: “During 2008, the [COG Parks Capital] Committee will review funding...Said committee shall propose a funding method to finance these

improvements. This funding method shall require the unanimous approval of the Participating Municipalities at a regular scheduled General Forum meeting.”

Key Subsequent Votes and Legal Contracts

On April 25, 2011 COG General Forum recessed into unit votes and each of the five municipalities obtained a majority vote on a motion to “adopt a Participation Agreement that sets the funding terms and debt service allocation formula for the development of regional parks [and] authorize the execution of a Participation Agreement.” The unit vote tally was 5-0 in favor of the measure.

The June 1, 2011 Fulton Bank loan documents state, in pertinent part:

- Section 2.01G: “There is no litigation, pending or threatened, against any of the Guarantors, the outcome of which might have a material adverse effect on its ability to perform this Guaranty Agreement or the validity of this Guaranty Agreement.”
- Section 3.02B: “The Authority shall have the right to request advances of the proceeds of the Authority Bond until June 1, 2013.”
- Section 3.04: “The [Centre Region Parks & Recreation] Authority shall have the right at any time, at the direction of the COG, to prepay without premium or penalty of any kind, all or any portion of the outstanding principal balance of the Authority Bond.”

On Nov. 28, 2011, COG General Forum approved a resolution revising the loan contract and guarantee agreements, by “authorizing” the Centre Regional Recreation Authority to “enter into a modification agreement for the loan to fund the development of regional parks subject to final approval by Fulton Bank,” and subject to confirmation by the COG Parks Capital Committee, to extend the drawdown date for the loan from June 1, 2013 to June 1, 2014. The members voted unanimously as individuals to approve the resolution: 21-0-2

On December 18, 2012, the COG General Forum approved a resolution revising the loan contract and guarantee agreements, by “authorizing” the Centre Regional Recreation Authority to work with COG staff and Fulton Bank staff to renegotiate the loan terms to obtain a lower interest rate on the debt. The members voted unanimously as individuals to approve the resolution: 22-0-3.

On February 25, 2013, the COG General Forum approved a resolution for referral to the participating municipalities, “authorizing” a merger of the Centre Regional Recreation Authority with the Centre Region Parks & Recreation Board, renaming the new hybrid entity the Centre Region Parks & Recreation Authority, arguing that membership on both committees was the same. The General Forum vote in favor of the motion was reported as 26-0-3; the May 28, 2013 COG General Forum minutes report that all five municipalities had approved the merger.

On May 27, 2014, the COG General Forum voted on a motion to “recommend” that the Parks Authority revise the loan contract and guarantee agreements, by extending the drawdown

date from June 1, 2014 to Dec. 1, 2015. The individual members voted in favor: 19-0-4.

On November 23, 2015, the COG General Forum voted on a motion to “recommend” that the Parks Authority revise the loan contract and guarantee agreements, by extending the drawdown date from Dec. 1, 2015 to June 1, 2017. The individual members voted in favor, 18-1-4, with Patton Township Supervisor Mr. Downsborough voting nay.”

Legal Argument

Taxing authority is not transferrable; it is held by elected legislators and only elected legislators.

Therefore, the May 27, 2014 General Forum vote and the November 23, 2015 General Forum vote were both unlawful attempts to delegate taxing authority from the lawful taxing authorities – the legislatures of State College, Ferguson Township, Patton Township, College Township and Harris Township – to an entity with no legal taxation authority: the Centre Region Parks & Recreation Authority.

Timeliness

While statutes of limitations may have expired regarding the State College Borough Council’s participation in the May 27, 2014 and November 23, 2015 votes, the COG General Forum is currently preparing to vote on another resolution regarding the Whitehall Road Regional Park and the Fulton Bank loan.

According to the proposed agenda for the COG General Forum’s Executive Committee meeting to be held Wednesday, May 17, 2017, the Executive Committee intends to present to the COG General Forum at its May 22, 2017 regular meeting, the following proposed text for Resolution 2017-2:

“That the General Forum, as recommended by the Finance Committee and Parks Capital Committee, adopt Resolution 2017-2 asking the Centre Region Parks and Recreation Authority to modify the regional parks loan with Fulton Bank in accordance with its May 1, 2017 proposal.”

Should the General Forum vote to approve that resolution, “asking” the Parks Authority to revise the loan contract and guarantee agreements, that vote will restart the litigation clock, and I will file suit to overturn the General Forum vote as an unlawful abdication of the five legislatures’ fiduciary responsibility to taxpayers.

Thus, I write to request that the members of the State College Borough delegation to the COG General Forum May 22, 2017 regular meeting move:

“That the General Forum **direct** the Parks Authority to prepay without premium or penalty of any kind, all of the outstanding principal balance of the Authority Bond,” subject to approval by a simple majority,

or, in the alternative, that the members of the State College Borough delegation to the COG General Forum move:

“That the General Forum **authorize** the Parks Authority to modify the regional parks loan with Fulton Bank in accordance with its May 1, 2017 proposal,” subject to approval by a unanimous unit vote of the five participating municipalities, such that a simple majority voting “Nay” in any one or more participating municipality shall ensure that the General Forum resolution fails, and therefore that the loan modification and guarantee agreements are no longer legislatively authorized effective June 1, 2017, triggering automatic prepayment of the outstanding principal to Fulton Bank.

I further urge the members of the State College Borough Council to vote “Yes” on any resolution directing the Parks Authority to close out the loan, and “No” on any resolution to authorize municipal taxpayer guarantees of the regional parks loan beyond the June 1, 2017 deadline, in order to

- 1) save Borough taxpayers roughly \$1.46 million in principal and interest payments between Jan. 1, 2020 and Dec. 31, 2031;
- 2) protect 100 acres of the fragile limestone groundwater recharge area of the Harter-Thomas drinking water wells;
- 3) protect 100 acres of productive farmland in the Slab Cabin Run watershed; and
- 4) eliminate future COG taxpayer liability for damages to the public water supply related to intensive land disturbance of the 100 acres proposed for the Whitehall Road Regional Park.

Thank you for your attention to this matter.

/s/ Katherine Watt

cc: Ferguson Township Board of Supervisors, via email
Patton Township Board of Supervisors, via email
College Township Council, via email
Harris Township Board of Supervisors, via email