

[J-43C&D-2009]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

EDWARD G. RENDELL, GOVERNOR OF : No. 82 MAP 2008
PENNSYLVANIA, AND JOHN QUIGLEY, :
ACTING PENNSYLVANIA SECRETARY :
OF CONSERVATION AND NATURAL : Appeal from the Order of the
RESOURCES, : Commonwealth Court at No. 268 MD 2007
: dated 10/03/08

Appellees

v.

PENNSYLVANIA STATE ETHICS
COMMISSION,

Appellant

EDWARD G. RENDELL, GOVERNOR OF : No. 83 MAP 2008
PENNSYLVANIA, AND JOHN HANGER, :
ACTING PENNSYLVANIA SECRETARY : Appeal from the Order of the
OF ENVIRONMENTAL PROTECTION, : Commonwealth Court at No. 269 MD 2007
: dated 10/03/08

Appellees

v.

PENNSYLVANIA STATE ETHICS
COMMISSION,

Appellant

: ARGUED: May 12, 2009

OPINION

This appeal concerns the issue of whether a non-profit corporation is a “business” as the term is defined in Pennsylvania’s Public Official and Employee Ethics Act.¹

The Ethics Act, among other things, prohibits public officials from engaging in conduct that constitutes a conflict of interest. See 65 Pa.C.S. §1103(a). Such a conflict arises when a public official or public employee uses the authority of his or her office for the private pecuniary benefit of himself, a family member, or a “business with which he or a member of his immediate family is associated.” 65 Pa.C.S. §1102. The act defines “business” as:

Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

65 Pa.C.S. §1102.

In April 2007, Pennsylvania’s General Counsel requested an advisory opinion or advice of counsel from the Pennsylvania State Ethics Commission, inquiring whether, under Section 1103(a) of the Ethics Act, the then-Secretary of the Department of Environmental Protection (“DEP”) and Secretary of the Department of Conservation and Natural Resources (“DCNR”) were required to recuse themselves from their respective departments’ grant-making process due to potential conflicts of interest.² In DCNR’s

¹ Act of October 15, 1998, P.L. 729, No. 93, §1 (as amended, 65 Pa.C.S. §§1101-1113) (the “Ethics Act”).

² Both Secretaries have since left their positions, and new appointments have occurred. By operation of Rule of Appellate Procedure 502(c), however, the appeal has not abated and the successors have been substituted as parties. See Pa.R.A.P. 502(c). (continued...)

case, the Secretary's wife was employed by the Pennsylvania Horticultural Society, a non-profit organization that has received grant funding from the DCNR. In DEP's case, the Secretary's husband performed consulting work on projects receiving grants from the DEP. In both instances, the Governor's office believed that recusal was unnecessary, but sought an additional opinion or advice of counsel from the Commission. See 65 Pa.C.S. §1107(10), (11) (authorizing the Commission to provide advice and opinions on such matters).

In advisory opinions, the Commission concluded that both Secretaries would be in violation of the Ethics Act's conflict provision if they participated in their agencies' grant-making processes involving such entities. It recommended that, to avoid such a conflict, the Governor should appoint someone outside each Secretary's chain of command to take his or her place in that process. See In re DiBerardinis, Case No. 07-010 (Pa. Ethics Comm'n Apr. 30, 2007); In re McGinty, Case No. 07-009 (Pa. Ethics Comm'n Apr. 30, 2007).

Both Secretaries, together with the Governor (collectively, "Appellees"), filed petitions for review addressed to both the Commonwealth Court's appellate jurisdiction and to its original jurisdiction. The appellate-jurisdiction petitions sought review of the advisory opinions, alleging that the Commission had committed errors of law and that the opinions would disrupt the effective administration of state government. The original-jurisdiction petitions requested declaratory relief regarding a number of issues raised in the opinions. The Commission filed a motion to quash the appeals and preliminary objections. The petitions were then consolidated for disposition.

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For ease of discussion, the term "Appellees" will generally refer to the Governor and the former Secretaries.

Initially, on December 19, 2007, the unanimous en banc Commonwealth Court, see Rendell v. State Ethics Comm'n, 938 A.2d 554 (Pa. Cmwlth. 2007), granted the Commission's motion to quash the appeal, granted the Commission's preliminary objections in part and denied them in part, and permitted the declaratory judgment action to go forward on two substantive questions, namely: (1) whether non-profit organizations are included in the definition of businesses under Section 1102 of the Ethics Act; and (2) whether, when a departmental head has a conflict of interest, the Governor must appoint someone outside the department head's chain of command to avoid the conflict. In response, Appellees and the Commission filed cross-motions for summary relief as to these issues.³

On October 3, 2008, the en banc Commonwealth Court issued a published opinion and order, see Rendell v. State Ethics Comm'n, 961 A.2d 209 (Pa. Cmwlth. 2008), concluding that the term "business," as defined in the Ethics Act, excludes non-profit entities. In reaching this conclusion, the court relied upon In re Nomination Pet. of Carroll, 586 Pa. 624, 896 A.2d 566 (2006), where this Court suggested that, in the context of required financial disclosures for election matters, a non-profit organization is not a business as defined by the Ethics Act.⁴ In this respect, the court rejected the

³ In granting the Commission's motion to quash, the Commonwealth Court concluded that the advisory opinions were not appealable orders under Section 702 of the Administrative Agency Law. See 2 Pa.C.S. §702. This Court allowed appeal from that determination, see Rendell v. State Ethics Comm'n, 598 Pa. 557, 958 A.2d 1044 (Pa. 2008) (per curiam), and consolidated the matter with the present direct appeal. The appeal by allowance was later discontinued, however, leaving for disposition only the issues from the declaratory judgment action that survived preliminary objections, as recited above.

⁴ Cf. Pilchesky v. Cordaro, 592 Pa. 15, 922 A.2d 877 (2007) (per curiam) (holding that a candidate's failure to disclose, in his statement of financial interests, his position as a (continued...))

Commission's contention that Carroll was not controlling because it did not definitively hold that non-profits are not businesses under the Ethics Act. Although the Commonwealth Court agreed with the Commission that different policies underlie the Act's requirements in connection with candidates' financial interest statements and with the avoidance of conflicts by public officials, it noted that the term "business" is specifically defined in the Act and indicated that it was not free to disregard this Court's interpretation of that term as excluding non-profits. Thus, in view of precedent, the court granted summary relief to Appellees and denied it to the Commission, declaring that the Secretaries would not be under a conflict of interest. See Rendell, 961 A.2d at 216. In light of its disposition, the court declined to reach the second substantive issue -- whether the act requires the Governor to appoint someone outside the department head's chain of command in the event of a conflict. See id. at 216 n.9.

Judge Cohn Jubelirer, joined by Judge Leavitt, filed a dissenting opinion, expressing that Carroll had declared "business" to be ambiguous on the issue of whether it included non-profits. The dissent stated that, in election matters, the Act must be read in pari materia with the Election Code, which tempers the definition of "business" to protect voter choice. Here, however, the salient rule of construction is that the Act, as remedial legislation, should be liberally construed to accomplish its goal of avoiding the appearance of impropriety. The dissent pointed out that employees and contractors of non-profit corporations may receive substantial pecuniary gain occasioned by a governmental grant, thus rendering the non-profit versus for-profit status of a corporation immaterial within the framework of the present issue. The

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director of a for-profit business entity constituted a fatal defect warranting his removal from the ballot).

dissent would thus have denied declaratory relief to Appellees on the question of the scope of the Act's definition of business. However, the dissent would have granted them relief on the issue of whether the Governor must appoint someone outside of the Secretary's chain of command to perform the grant-making function. In this latter respect, the dissent opined that the Secretary's personal recusal would be sufficient to avoid the conflict of interest, particularly as the Act does not impute a conflict based on a person's being in a chain of command. See id. at 217-19 (Cohn Jubelirer, J., dissenting).

The Commission filed a notice of appeal from the Commonwealth Court's order, limited to the issue of whether the court correctly interpreted "business" to exclude non-profit entities, and probable jurisdiction was noted.

Presently, the Commission argues that, as remedial legislation designed to promote public trust in government, the Ethics Act should be liberally construed. See Maunus v. State Ethics Comm'n, 518 Pa. 592, 598-600, 544 A.2d 1324, 1327-28 (1988). More specifically, the Commission emphasizes that the General Assembly expressly declared in Section 1101.1(a) of the enactment that its purpose is to assure the citizens of Pennsylvania that the financial interests of their representatives and public servants will not conflict with their duties to the Commonwealth.⁵ See Brief for

⁵ That provision states:

(a) Declarations.--The Legislature hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In order to strengthen the faith and confidence of the people of this Commonwealth in their government, the Legislature further declares that the people have a right to be assured that the financial interests of holders of or nominees or candidates for public office do not conflict with the public trust. Because public confidence in government can best be sustained by assuring the people of the impartiality and honesty of public officials, this (continued...)

Commission at 26. The Commission also argues that, on its face, Section 1102's definition of business expressly includes any corporation and any organization, without qualification. It submits that, in the final phrase of the definition ("or any legal entity organized for profit"), the "or" is disjunctive, and the independent use of the word "any" in this clause precludes an interpretation that would apply the "for profit" qualification to corporations and organizations. Further, the Commission avers that the qualifier "organized for profit" does not apply to "corporation" or "organization," because it does not extend to all of the other preceding entities listed in the definition. As an example, the Commission observes that receiverships are not organized for profit.

The Commission's argument with regard to Carroll is two-fold. First, it contends that the Court in Carroll had been erroneously misinformed that the Commission had no rulings as to whether non-profit entities were considered businesses under the act. Citing several of its previous rulings, the Commission submits that it has consistently interpreted the term "business" as it is defined in Section 1102 to include non-profit corporations and organizations. See Brief for Commission at 29-30. Alternatively, the Commission attempts to distinguish the holding in Carroll by arguing that

the Carroll decision did not definitively decide the status of non-profits under the Ethics Act, particularly with respect to situations involving financial interests or relationships. Rather, this Court simply decided that

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chapter shall be liberally construed to promote complete financial disclosure as specified in this chapter. Furthermore, it is recognized that clear guidelines are needed in order to guide public officials and employees in their actions. Thus, the General Assembly by this chapter intends to define as clearly as possible those areas which represent conflict with the public trust.

65 Pa.C.S §1101.1(a).

any ambiguity in the definition of “business” should be construed most favorably to candidates seeking ballot access, and that it would not be a fatal defect to a candidate’s nomination petition for the candidate to fail to disclose on his Statement of Financial Interests his involvement with a non-profit corporation from which he receives no compensation and that has nothing to do with his financial interests.

Id. at 34 (emphasis is removed). The Commission avers that this factual distinction renders Carroll inapposite to the instant matter. As such, the Commission maintains that Carroll should be distinguished as only applying to election cases involving a candidate’s failure to disclose non-financial associations on a Statement of Financial Interests filed with nomination petitions.

In response, Appellees urge this Court to abide by its prior interpretation of the scope of the Ethics Act. In this regard, Appellees rely heavily on Carroll, which they view as holding definitively that Section 1102 excludes non-profit organizations from the statutory definition of “business.” In addition to their more general stare decisis argument, Appellees contend that the plain language of the Ethics Act supports the conclusion that non-profit entities are not covered by the statute. Appellees argue that, when several words are followed by a modifying phrase, the natural construction of the language demands that the modifying phrase be read as applicable to all. See Brief for Appellees at 10 (citing Commonwealth v. Rosenbloom Fin. Corp., 457 Pa. 496, 500, 325 A.2d 907, 909 (1974)). Further, Appellees aver that there could be no legislative purpose in excluding only a single nebulous category of non-profit businesses, i.e. non-profit “legal entities,” while including within the act all other non-profit corporations. See id. at 13.

The issue for resolution is one of statutory interpretation; it is therefore a question of law subject to plenary review by this Court, in which our standard of review is de novo. See Gardner v. WCAB (Genesis Health Ventures), 585 Pa. 366, 372 n.4, 888 A.2d 758, 761 n.4 (2005).

In Carroll, this Court credited the candidate's argument that the Ethics Act, at its core, is designed to expose possible financial conflicts and, thereby, strengthen the citizens' faith and confidence in their government by assuring the impartiality of public officials. See Carroll, 586 Pa. at 631, 896 A.2d at 570. Accordingly, in determining whether the candidate's failure to disclose his unpaid directorship positions on the boards of two non-profit organizations constituted a fatal defect to his financial disclosure statement, the Court focused its attention most closely on the fact that no pecuniary or other material gain flowed from the candidate's positions with the organizations in question. In a footnote, the Court recognized that there were two possible interpretations of the term "business" as set forth in the act's definitional provision and stated generally that, to the extent the definitional language is ambiguous, it should be construed favorably to the candidate seeking office. See id. at 638 n.10, 896 A.2d at 574 n.10. However, the Court highlighted that the "distinct question" it was called upon to decide pertained to "whether and when a failure to disclose **non-financial** associations on a Statement of Financial Interests should trigger operation of the fatal defect rule." Id. at 637, 896 A.2d at 573 (emphasis in original). In the subsequent dispositional section of the decision, moreover, Carroll repeatedly stressed that the crux of the issue concerned the candidate's financial interests -- his compensation, or lack thereof -- in connection with the entity in question; the Court rarely, if ever, returned to the significance of the organizations' non-profit status in the context of the case. Thus, a close reading of Carroll reveals that the language pertaining to the scope of the term "business" was ancillary and, ultimately, unnecessary to the resolution of the controversy. As such, it constituted dicta and left open the question, for our present inquiry, whether the term "business" includes non-profit corporations. See Barnes v. Alexander, 232 U.S. 117, 120, 34 S. Ct. 276, 277

(1914) (observing that certain remarks in a prior opinion “were not necessary to the decision . . . so that at least we are warranted in treating the question as at large”); see also S.E.C. v. Edwards, 540 U.S. 389, 396, 124 S. Ct. 892, 898 (2004); Commonwealth v. Singley, 582 Pa. 5, 15, 868 A.2d 403, 409 (2005) (citing Hunsberger v. Bender, 407 Pa. 185, 188, 180 A.2d 4, 6 (1962) (finding that a statement in prior opinion, which clearly was not decisional but merely dicta, “is not binding upon us”)). See generally Storch v. Borough of Landsdowne, 239 Pa. 306, 308, 86 A. 861, 861 (1913) (“Courts only adjudicate issues directly raised by the facts in a case or necessary to a solution of the legal problems involved.”); Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 399-400 (1821) (Marshall, C.J.) (explaining why dicta is not binding in subsequent cases).

We recognize that, in our subsequent per curiam Order in Pilchesky, this Court stated, in a summary fashion, that Carroll stood for the position that a non-profit organization does not constitute a business entity under the Ethics Act. See Pilchesky, 592 Pa. at 16 n.1, 922 A.2d at 877 n.1. The critical circumstance brought forward in that case, however, was that the individual seeking ballot access had failed to disclose his holdings in a financial institution organized for profit. Thus, any question of whether the Ethics Act’s definition of “business” includes non-profits was necessarily non-dispositional. Moreover, Pilchesky’s characterization of Carroll does not reflect an in-depth analysis of the reasoning employed by that decision. Finally, it is worth noting that this Court did not have the benefit of the Commission’s advocacy in either Carroll or Pilchesky and, thus, proceeded without guidance from the administrative agency charged with overseeing the implementation of the statute in question.⁶

⁶ Notably, a similar situation was presented in Sackett v. Nationwide Mut. Ins. Co., 596 Pa. 11, 940 A.2d 329 (2007), wherein this Court granted reargument to consider the position of the Insurance Department.

We agree with the suggestion from Carroll that the term “business” as contained in Section 1102 of the Ethics Act can reasonably be construed to either include or exclude non-profit entities. See Carroll, 586 Pa. at 638 n.10, 896 A.2d at 574 n.10. It is therefore ambiguous. See generally Trizechahn Gateway LLC v. Titus, ___ Pa. ___, ___, 976 A.2d 474, 483 (2009) (recognizing that an ambiguity exists when there are at least two reasonable interpretations of the text under review). Because of this ambiguity, we must reference principles of statutory construction to discern the legislative intent. See O’Rourke v. Commonwealth, 566 Pa. 161, 172, 778 A.2d 1194, 1201 (2001); see also 1 Pa.C.S. §1921(a) (providing that the object of all statutory construction is to ascertain and effectuate the intent of the General Assembly). In undertaking our analysis,

we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear. We may also consider other factors, such as: the mischief to be remedied; the object to be attained; and the consequences of a particular interpretation.

O’Rourke, 566 Pa. at 173, 778 A.2d at 1201 (citing Consulting Eng’rs Council of Pa. v. State Architects Licensure Bd., 522 Pa. 204, 208, 560 A.2d 1375, 1377 (1989), and 1 Pa.C.S. §§1921(c)(3), (4), (6)).

Certainly, Carroll’s approach to Section 1102 of the Act was shaped in light of the harsh consequence that would result from an alternative interpretation, specifically, removal of a candidate from the ballot. Here, however, no such concern exists, and there are several equally compelling reasons to support the interpretation advocated by the Commission. For one, when interpreting the “organized for profit” qualifier in context, it is notable that the limitation appears at the end of the definition, and thus, under the last-antecedent principle of statutory construction as applied in other cases, see, e.g., McKinley v. PennDOT, 564 Pa. 565, 577 n.10, 769 A.2d 1153, 1160 n.10

(2001), it only to applies to the final item, “any legal entity.” See generally Payless Shoesource Inc. v. Travelers Companies, Inc., 569 F. Supp. 2d 1189, 1197 (D. Kan. 2008) (suggesting that the last antecedent rule may be applied where the court finds the language to be ambiguous).⁷ As such, the interpretation urged by Appellees would be problematic because it would apply the “organized for profit” qualifier to receiverships; such receiverships are not by nature organized for profit -- although theoretically they may generate a profit, at least in a generic sense (as Appellees point out) -- but rather, for the protection of an entity’s assets and the ultimate distribution of those assets to creditors. See Commonwealth ex rel. Corbett v. Griffin, 596 Pa. 549, 559, 946 A.2d 668, 674 (2008) (rejecting the position that an end-of-list qualifier applied to all items in the list, because its application to one of the list’s items would be improbable).

In addition, this construction aligns with the Ethics Act’s status as remedial legislation designed to promote public trust in government, particularly with regard to the financial dealings of public officials. See In re Benninghoff, 578 Pa. 402, 409, 852 A.2d 1182, 1186 (2004) (“The obvious purpose of the Ethics Act is to mandate disclosure of

⁷ We are aware that the last-antecedent rule “is not absolute, but the United States Supreme Court has noted that it is ‘quite sensible as a matter of grammar,’ and the approach generally may be applied in absence of evidence of some contrary purpose.” Pennsylvania Dep’t of Banking v. NCAS of Delaware, LLC, 596 Pa. 638, 651, 948 A.2d 752, 760 (2008) (quoting Barnhart v. Thomas, 540 U.S. 20, 26, 124 S. Ct. 376, 381 (2003)). Appellees argue against application of this rule by observing that this Court recently interpreted the phrase, “stock, securities or indebtedness of subsidiary corporations” to refer to the stock and securities of subsidiary corporations, as well as to their indebtedness. See Rosenbloom, 457 Pa. at 498, 325 A.2d at 908, cited in Brief for Appellees at 11. That situation is entirely different, as the list items (stock, securities, and indebtedness) were all aspects of the corporations in view, as revealed by the preposition, “of.” In the list here, each element is a self-contained item with the last one followed by limiting language. The interpretive question is whether such limitation applies to the last item only or to all the others. Accordingly, there is no legitimate comparison between Rosenbloom and the present case.

the financial dealings of public officials.”); Carroll, 586 Pa. at 637, 896 A.2d at 573 (“The intent and purpose of the Ethics Act is not shrouded in mystery.”); see also 1 Pa.C.S. §1922(5) (providing that the General Assembly is presumed to intend to favor the public interest as against any private interest). In light of such a clear objective, it seems reasonable that a liberal interpretation of the term “business” is necessary to assure our citizens that the private financial interests of their public officials will not undermine the honest discharge of those officials’ public duties. See 1 Pa.C.S. §1928(c); Maunus, 518 Pa. at 598-600, 544 A.2d at 1327-28 (reasoning that the purpose of the Ethics Act is to ensure the “integrity and honesty of employees of this Commonwealth”). For example, as the Commonwealth Court dissent developed:

It is inconsistent to allow one public official who earns \$90,000 from a corporation as its employee or officer to conduct the Commonwealth’s business with that corporation while a different public official earning a similar salary may not conduct Commonwealth business with a different corporation merely because one corporation is non-profit and the other is for-profit.

Rendell, 961 A.2d at 218 (Cohn Jubelirer, J. dissenting). Thus, regardless of whether the corporation receiving public funds is organized as a non-profit organization or a for-profit business, the appearance of impropriety would exist where a public official or his family member could realize a pecuniary gain from grants to such an entity if those grants stemmed from the public official’s “use[of] the authority of his [or her] office.” 65 Pa.C.S. §1102.

As a final matter, this interpretation is consistent with the Commission’s understanding of Section 1102, which, under the prevailing Pennsylvania law, is entitled to deference. See generally Winslow-Quattlebaum v. Maryland Ins. Group, 561 Pa. 629, 635, 752 A.2d 878, 881 (2000) (explaining that, when construing statutory

language, courts are to afford substantial deference to the interpretation rendered by the agency charged with its administration).⁸

Accordingly, when we consider the “organized for profit” limitation in context of the definitional language as a whole and in light of the legislative objectives of the statute pertaining to the avoidance of impropriety or the appearance of impropriety, we ultimately conclude that the term “business,” as defined by Section 1102 of the Ethics Act, should be interpreted to include non-profit entities.

In concurrence, Madame Justice Greenspan appears to agree with our decision on its merits, but, although the parties do not raise prudential considerations, she would invoke such concerns sua sponte and deny review. The first set of these is couched, in the concurring opinion, under the general rubric of “case or controversy” and “justiciability.” See Concurring and Dissenting Opinion, slip op. at 2 & n.2.⁹

⁸ Although this Court recently suggested that less deference may be accorded to an administrative agency’s argument adopted for the first time in pending litigation, see generally Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, ___ Pa. ___, ___, 964 A.2d 855, 868 (2009), the Commission emphasizes that it has applied its presently-advocated interpretation in adjudications that pre-dated the present litigation. See In re Soltis-Sparano, Case No. 94-054-C2 (Pa. Ethics Comm’n Feb. 20, 1997), at 31 (“The clear and unambiguous statutory language is that any corporation, including a non-profit corporation, is a ‘business.’”), reproduced in Brief for Commission at Exh. G.

⁹ In advancing her position that prudential considerations bar our review, Justice Greenspan relies on a number of decisions concerning the courts’ subject matter jurisdiction. See, e.g., Concurring Opinion, slip op. at 2 n.2 (citing, inter alia, Pennsylvania R.R. Co. v. PUC, 396 Pa. 34, 38, 152 A.2d 422, 424 (1959) (“No emergency, real or feared, and no alleged hardship to a complaining party, however, great, can justify a court’s entertaining and passing upon a subject matter which is not within its jurisdictional competence.”)). There is no reasonable claim in this case, however, that the Commonwealth Court or this Court lacks subject matter jurisdiction to engage in the straightforward exercise of statutory construction necessary to resolve the present intergovernmental dispute. Indeed, the concurrence otherwise appears to implicitly acknowledge that its focus is on prudential matters, particularly in its development of the distinction between the jurisdictional aspects of the federal case-or-(continued...)

Several discrete doctrines -- including standing, ripeness, and mootness -- have evolved to give body to the general notions of case or controversy and justiciability. Cf. Allen v. Wright, 468 U.S. 737, 750, 104 S. Ct. 3315, 3324 (1984) (identifying standing, ripeness, mootness, and political question, as “doctrines that cluster about [the] Article III” case or controversy requirement (citation omitted)).¹⁰ Under prevailing Pennsylvania law, however, the matter of standing is not available to be raised by a court sua sponte. See In re Nomination Petition of DeYoung, 588 Pa. 194, 201, 903 A.2d 1164, 1168 (2006) (“This Court has consistently held that a court is prohibited from raising the issue of standing sua sponte.”).

Here, other than the matter of asserted mootness, the bulk of the concerns raised in the concurrence -- including the allusions to advisory opinions and hypothetical versus concrete impact -- fall within the umbrella of the standing doctrine as it is understood in Pennsylvania. See, e.g., Pittsburgh Palisades Park, LLC, v. Commonwealth, 585 Pa. 196, 203, 888 A.2d 655, 659 (2005) (“The courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions; consistent therewith, the requirement of standing arises from the principle that judicial intervention is appropriate only when the underlying controversy is real and concrete[.]” (internal quotation marks and modifications omitted)). Thus, under this Court’s case-or-

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controversy requirement and the prudential application of similar principles in Pennsylvania. See Concurring Opinion, slip op. at 2 n.1. Thus, the line of decisions concerning subject matter jurisdiction, as referenced in the concurrence, lacks relevance.

¹⁰ Pennsylvania courts have frequently found the extensive body of federal decisions helpful in addressing standing and other prudential considerations. See, e.g., Fumo v. City of Philadelphia, ___ Pa. ___, ___, 972 A.2d 487, 500 (2009).

controversy jurisprudence as it stands, these concerns simply are not available for consideration at this time, since they have not been raised by any of the parties.¹¹

The second strand of case-or-controversy jurisprudence, ripeness, overlaps substantially with standing. See generally Socialist Workers Party v. Leahy, 145 F.3d 1240, 1244 -1245 (11th Cir. 1998) (“In cases involving pre-enforcement challenges such as this one, we have previously noted that the lines among the justiciability doctrines tend to blur.”).¹² Our approach would be peculiar indeed if we were to maintain that the components of the standing doctrine discussed above (including advisory-opinion and hypothetical-versus-concrete aspects) are unavailable for sua sponte consideration by the courts, yet nonetheless may be considered sua sponte by simply restyling them as ripeness (or, more generally, case-or-controversy or justiciability) concerns.¹³

¹¹ Parenthetically, in terms of the substantive standing analysis advanced in the concurrence, although the opinion discusses the viability of a pre-enforcement challenge to the application of statutory regulatory provisions, it does not address the line of decisions recognizing the availability of a pre-enforcement challenge in the regulatory context. See, e.g., Arsenal Coal Co. v. Commonwealth, 505 Pa. 198, 209-10, 477 A.2d 1333, 1339-40 (1984) (citing Abbott Labs. v. Gardner, 387 U.S. 136, 87 S. Ct. 1507 (1967)).

¹² Commenting on the doctrinal overlap between standing and ripeness analysis, one court has observed: “Few courts draw meaningful distinctions between the two doctrines; hence, this aspect of justiciability is one of the most confused areas of the law.” Elend v. Basham, 471 F.3d 1199, 1205 (11th Cir. 2006) (quoting Wilderness Soc’y v. Alcock, 83 F.3d 386, 389-90 (11th Cir. 1996)).

¹³ The remaining aspect of the ripeness doctrine concerns the degree to which the peculiar facts are relevant to resolution of the dispute. See, e.g., LeClerc v. Webb, 419 F.3d 405, 413-414 (5th Cir. 2005) (observing that a pre-enforcement action “is generally ripe if any remaining questions are purely legal ... [and] further factual development” is not required for effective judicial review). It is difficult to envision a more focused legal inquiry than responding to Appellees’ directed effort to obtain a definitive answer to the question whether the term “business,” as used in the Ethics Code, encompasses a particular type of entity.

Contrary to Justice Greenspan's perspective, we do not "implicitly overrule the long line of Pennsylvania Supreme Court decisions that have denied parties relief in the form of advisory opinions under the Declaratory Judgment Act." Concurring Opinion, slip op. at 6 n.8. Rather, we merely decide the discrete legal issue presented to us by the parties in this appeal and abide by the existing limitations on sua sponte judicial review.

Justice Greenspan also raises the issue of mootness, although it also has not been raised by the parties. See Concurring Opinion, slip op. at 7. We recognize that this Court has in the past considered such concerns of its own accord. See, e.g., In re Estate of Baeher, 533 Pa. 70, 618 A.2d 944 (1993) (per curiam). The Court has never indicated, however, that it is obliged to search outside the record to invoke the mootness doctrine sua sponte, and we decline to do so here.

In this case, we have before us a narrow, focused, purely legal issue in sharp controversy between Appellees, including the Chief Executive Officer of Pennsylvania, and the independent administrative agency charged with enforcement responsibility relative to ethical obligations of government officials. Cf. In re Gross, 476 Pa. 203, 210-11, 382 A.2d 116, 120 (2002) (expressing the Court's special reluctance to consider moot questions which raise constitutional issues). The Governor has asserted that the scope of the issue extends well beyond the immediately affected parties. The question presented has been fully developed in the Commonwealth Court, culminating in a published opinion which all Justices agree warrants correction, and in this Court via able advocacy. The extra-record factual circumstances raised by Justice Greenspan have no impact on the salient legal analysis, or on the Governor's more abstract claim of standing, to which any challenge has been waived. The subject is an important provision of the Ethics Act, which emphasizes maintenance of the public trust and the

need for clear guidelines to direct public officials and employees in their actions. See 65 Pa.C.S. §1101.1(a) (“[T]he General Assembly by this chapter intends to define as clearly as possible those areas which represent conflict with the public trust.”).

Despite the Legislature’s manifest intent for clarity, we have determined (and Justice Greenspan apparently agrees) that the provision of the Ethics Act under review is materially ambiguous. The procedure advocated by Justice Greenspan for achieving clarity through the courts (which are charged with the interpretation of legislative enactments) entails requiring public officials to expose themselves to ethical investigation and possible civil fines, criminal penalties, see 65 Pa.C.S. §1109(a), and removal from office or termination from employment, 4 Pa. Code §7.173, in order to secure meaningful review.

In such circumstances, we decline to reach outside the record to assess the degree to which the ongoing controversy arising out of the clear and well developed differences between the Governor of Pennsylvania and the State Ethics Commission is presently acute. Indeed, were we to do so, it appears the litigants might lay good claim to the availability of the great-public-importance or capable-of-repetition-yet-evading-review exceptions to the mootness doctrine. See Pap’s A.M. v. City of Erie, 571 Pa. 375, 391, 812 A.2d 591, 600-01 (2002) (alluding to the great-public-importance exception, particularly in light of a material lack of clarity in governing law); Consumers Educ. and Protective Ass’n v. Nolan, 470 Pa. 372, 383, 368 A.2d 675, 681 (1977) (declining to dismiss a declaratory judgment action on mootness grounds despite the expiration of the term for which one claiming the status of an administrative commissioner, explaining “we conclude that the [legal issue surrounding such claimant’s entitlement to office] presents a question capable of repetition and of sufficient public importance that it ought not to escape appellate review at this time”).

The judgment of the Commonwealth Court is reversed, and the case is remanded for further proceedings consistent with this Opinion.¹⁴

Mr. Chief Justice Castille, Messrs. Justice Eakin and Baer, Madame Justice Todd and Mr. Justice McCaffery join the opinion.

Madame Justice Greenspan files a concurring opinion.

¹⁴ In response to Justice Greenspan's comments concerning the above order line, see Concurring Opinion, slip op. at 9 n.10, it is not this Court's task to spell out for an intermediate appellate court or court of original jurisdiction all steps which must be taken when a case is returned to it after our review. Our foremost concern, here and elsewhere, is to address the arguments before us, rendering decision within the scope of the appeal as it reaches us, as we have done here. Here, as elsewhere, we have concluded by merely returning the matter to the court of original jurisdiction to accomplish whatever remains to be done. Presumably, the Commonwealth Court will formally enter judgment favorable to the State Ethics Commission consistent with this opinion and close the case.