

**FIRST ANNUAL REPORT OF THE
ATTORNEY GENERAL TO THE GENERAL ASSEMBLY
PURSUANT TO SECTION 318 OF ACT 38 OF 2005**

September 5, 2006

**TOM CORBETT
Attorney General**

The central purpose of Act 38 of 2005 is to protect normal agricultural operations from unauthorized local regulation. The Act furthers that purpose by conferring upon the Attorney General: (1) the power and duty, upon the request of an owner or operator of a normal agricultural operation, to review a local ordinance for compliance with State law; and (2) the authority, in the Attorney General's discretion, to bring a legal action against a local government unit in Commonwealth Court to invalidate or enjoin the enforcement of an unauthorized local ordinance.

Act 38 took effect on July 6, 2005. In response, the Office of Attorney General developed and implemented a process for receiving requests for review of ordinances, for completing such reviews within the 120-day time period prescribed by the Act, and for bringing legal action when such action is warranted. Consistent with Act 38, all requests for review received during the year ending July 6, 2006 were completed within 120 days or were still within the 120-day review period.

When the Office receives a request for review of an ordinance, the Office sends the owner/operator who requested the review an acknowledgement that the request was received, and the municipality whose ordinance is the subject of the request for review a notice that the request has been received and that the ordinance will be reviewed.

When the Office completes its review, the Office advises both the owner/operator and the municipality in writing whether or not it intends to bring legal action to invalidate or enjoin the enforcement of the ordinance. If the Office advises the municipality that it intends to bring legal action, it affords municipal officers an opportunity to discuss the legal problems identified in the review and to correct such problems before a legal action is brought.

Data

Between July 6, 2005 and July 6, 2006, the Office of Attorney General (OAG):

- Received 16 requests for review of local ordinances
- Completed review of 14 ordinances (2 additional reviews were completed before the date of this Annual Report)
- Sent 8 notices to municipalities of legal problems with ordinances
- Brought 4 legal actions against municipalities in Commonwealth Court to invalidate or enjoin the enforcement of unauthorized local ordinances.

Each of the legal actions brought is in its early stages; as such, there are as yet no outcomes to report.

Requests for Review, Nature of Complaints, and Action Taken

The following is a summary of requests for review of local ordinances received by the OAG between July 6, 2005 and July 6, 2006. which, with respect to each request, identifies the ordinance submitted for review; the complaint about the ordinance asserted by the owner/operator who requested the review, and the actions taken by the OAG up to the date of this Annual Report.

1. Upper Providence Township, Montgomery County

The owner/operator requested review of the Township Zoning Code, which prohibits commercial composting. The owner/operator complained that the Township was applying the Code to bar agricultural composting. The OAG notified the Township of legal problems with its application of the Zoning Code to agricultural composting and offered the Township an opportunity to discuss and correct them. The Township agreed to resolve the matter cooperatively with the owner/operator.

2. Cumberland Township, Greene County

The owner/operator requested review of Ordinance No. 3 of 1998, concerning stray animals. The owner/operator complained that animals might be confiscated. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

3. Washington Township, Dauphin County

The owner/operator requested review of the Township Zoning Ordinance. The owner/operator complained that re-zoning of the area encompassing the owner/operator's property from agriculture to conservation diminished the value of the property. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

4. Bushkill Township, Northampton County

The owner/operator requested review of Ordinance No. 2000-1, which regulates the storage of materials and prohibits littering. The owner/operator complained that the Township was applying the ordinance to bar the storage of abandoned and damaged campers, buses, and farm equipment on agricultural property. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

5. Locust Township, Columbia County

The owner/operator requested review of Ordinance No. 4-2001, which regulates "intensive animal agriculture". The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance.

6. Richmond Township, Berks County

The owner/operator requested review of Ordinance No. 81-2000, which regulates “intensive agricultural activity”. The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance.

7. Lower Oxford Township, Chester County

The owner/operator requested review of Ordinance No. 2004-1, which regulates composting activities. The owner/operator complained that the ordinance unlawfully restricts mushroom compost preparation. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. After the Township failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance.

8. Heidelberg Township, North Heidelberg Township, Robesonia Borough, Womelsdorf Borough, Berks County

The owner/operator requested review of the Joint Ordinance, which regulates “intensive raising of livestock or poultry”. The owner/operator complained that the ordinance conflicts with state law. The OAG notified the municipalities of legal problems with the ordinance and offered the municipalities an opportunity to discuss and correct them. After the municipalities failed to correct the problems, the OAG filed a lawsuit in Commonwealth Court to invalidate and enjoin the enforcement of the ordinance.

9. Belfast Township, Fulton County

The owner/operator requested review of Ordinance No. 3 of 2001, which prohibits corporate ownership of farms. The owner/operator complained that the ordinance conflicts with state law. The OAG notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them. The Township responded that it will repeal the Ordinance.

10. Mount Joy Township, Adams County

The owner/operator requested review of the Township Zoning Ordinance. The owner/operator complained that re-zoning of the area encompassing the owner/operator's property from rural residential to agricultural preservation diminished its marketability. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

11. Lower Towamensing Township, Carbon County

The owner/operator requested review of the Ordinance of 1978, which prohibits "intensive agriculture". The owner/operator complained that the ordinance conflicts with state law. The OAG has notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them.

12. East Bradford Township, Chester County

The owner/operator requested review of the Riparian Buffer Ordinance. The owner/operator complained that the ordinance impedes expansion of animal raising and keeping activities. The ordinance is under review.

13. Skippack Township, Montgomery County

The owner/operator requested review of Township Code Section 132-1, which regulates disturbance of the peace. The owner/operator complained that the Township

applied the ordinance to bar the use of a propane cannon to repel deer. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

14. Paradise Township, York County

The owner/operator requested review of Zoning Ordinance No. 1995-1, which requires a minimum lot size of 5 acres for agricultural operations. The owner/operator complained that the ordinance impedes swine and chicken operations on less than 5 acres. The OAG notified the owner/operator and the Township that it would not file a lawsuit.

15. Clay Township, Lancaster County

The owner/operator requested review of the Township Zoning Ordinance, which regulates “intensive agricultural production facilit[ies]”. The owner/operator complained that the ordinance impedes expansion of normal agricultural operations. The OAG has notified the Township of legal problems with the ordinance and offered the Township an opportunity to discuss and correct them.

16. Marshall Township, Allegheny County

The owner/operator requested review of the Township Zoning Ordinance, which requires a minimum lot size of 5 acres for agricultural operations. The owner/operator complained that the ordinance impedes beekeeping operations on less than 5 acres. The OAG notified the owner/operator and the Township that it would not file a lawsuit.