

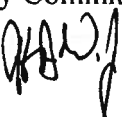


JUDGE'S CHAMBERS
SEVENTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA
SNYDER COUNTY UNION COUNTY

HAROLD F. WOELFEL, JR.
JUDGE
COURT OF COMMON PLEAS

SNYDER COUNTY COURTHOUSE
P O BOX 217
MIDDLEBURG, PA 17842
(717) 837-4238

MEMORANDUM

To: All Members, House Judiciary Committee
From: Harold F. Woelfel, Jr., Judge 
Date: April 17, 1997
Subject: House Bill 231 and House Bill 232

In all counties of the third through fifth class, and in counties of the sixth through eighth classes which have elected to create prison boards, the President Judge or another judge designated by the President Judge are required to serve on the Board of Inspectors of the county jail or prison. In addition, since the creation of Intermediate Punishment Boards the President Judge or the President Judge's designee is also required to serve on that board.

For many years many President Judges throughout the Commonwealth have had concerns regarding the appropriateness of their service on the Board of Inspectors for the county jail or prison. Those same concerns attached to service on Intermediate Punishment Boards. A survey of all affected President Judges was undertaken by me on behalf of Pennsylvania Conference of State Trial Judges. After the survey results were presented to the membership of the Conference the Conference voted to pursue a change in legislation which would permit a President Judge to opt out of service on the Board of Inspectors and Intermediate Punishment Board.

Many judges see service on these Boards and the legislation which mandates it to require an unconstitutional blurring of the line between the executive and judicial branches of government. We are asked to participate in the overseeing and management of an institution which is not an arm of the courts.

Other judges see service on these Boards as putting them in an untenable conflict of interest. The issues which a judge must consider when imposing sentence on an individual defendant may be at conflict with those issues which the judge must consider as a member of the Board of Inspectors, and to a lesser extent, the Intermediate Punishment Board. Another example of the conflict of interest potential is the frequency with which judges, as members of the Prison Board, are sued by inmates who may have matters actively pending before the judge. While this is less of a concern in multi-judge counties, it is of great concern in the smaller counties where only one judge is addressing the criminal courts.

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Those judges who object to service address that objection differently. Some serve, but with an uncomfortable feeling about their service. Others have advised the Boards in their counties that they will not serve, citing what they perceive to be the unconstitutionality of the statutory mandate. (I am aware of no litigation which has addressed this perceived unconstitutionality). Others simply fail to attend the meetings, being repeatedly reported as being absent therefrom.

Other judges welcome the opportunity to serve on these Boards, viewing it as an opportunity to see to the proper management of the prisons.

The legislation which has been introduced attempts to address these concerns. It permits those President Judges who believe that service is either unconstitutional or improper to opt out of service. It permits those judges who wish to continue to remain as members to do so. I have attached copies of the cover letter which accompanied the survey that was directed to all affected President Judges. I have also attached a letter that I directed to Representative Daniel F. Clark which includes the survey results.

The Pennsylvania Conference of State Judges requests your favorable consideration of House Bills 231 and 232.



JUDGE'S CHAMBERS
SEVENTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA
SNYDER COUNTY UNION COUNTY

HAROLD F. WOELFEL, JR.
JUDGE
COURT OF COMMON PLEAS

November 1, 1995

SNYDER COUNTY COURTHOUSE
P.O. BOX 217
MIDDLEBURG, PA 17842
(717) 837-4238

The Honorable Thomas G. Gavin, President Judge
Chester County Courthouse
2 North High Street
West Chester, PA 19380

Re: Judges serving on Boards of Inspectors
of jails or county prisons

Dear President Judge Gavin:

As you know, 61 P.S. §408 requires that the President Judge, or another judge designated by the President Judge, serve on a Board of Inspectors of the jail or county prison of all counties of the third through fifth class, and, in counties of the sixth through eighth classes in which the county commissioners have elected by resolution to be governed by the provisions of Section 408. This requirement has been a concern of many judges throughout the Commonwealth for various reasons. Some perceive it places them in an untenable conflict of interest. Others see it as an unconstitutional blurring of the line between the executive and judicial branches of government. The purpose of this letter is to inquire as to your views regarding this mandatory service.

I have the "high honor and privilege" of serving as President Judge Wayne A. Bromfield's designee on the Snyder County Prison Board of Inspectors in the county in which I have primary responsibility in our two county district. I have expressed my concerns about Section 408 to the Honorable Alan S. Penkower, our President of the Pennsylvania Conference of State Trial Judges. As always happens, the individual who raises an issue is the recipient of the request to address the issue thus raised. Judge Penkower has asked that I canvas the President Judges affected by Section 408 to solicit their points of view so that the issue may be discussed by the leadership of the Conference and addressed at the meeting of the Conference in Philadelphia in February.

I have discussed this with many judges from small and medium sized counties. Most would like to see the obligation to serve abolished. Judge Penkower informed me that when the matter was discussed at a recent executive committee of the Conference you were singular in your desire to continue to serve on a Board of Inspectors.

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November 1, 1995

Three possibilities of addressing this situation seem to suggest themselves:

1. Seek the enactment of legislation that would remove President Judges or their designees from the prison board.
2. Seek no change in the legislation, with the effect that President Judges or their designees would continue to be required to serve.
3. Seek the enactment of legislation that would permit President Judges from opting out of membership on the prison board. (Some President Judges have simply refused to participate in the activities of their Boards of Inspectors, and/or to designate another judge to serve.)

There may be other options that you would believe viable. I am requesting that you mark your preference on the accompanying page, and feel free to add any comments or suggestions on this issue. Please return the page to me at the address set forth thereon.

I would be happy to discuss this issue with you at your convenience, and to provide you with some additional information which I have gathered from other judges with whom this issue has been addressed.

Sincerely,

HAROLD F. WOELFEL, JR.
Judge

HFW:ckb

The Honorable Thomas G. Gavin, President Judge
Chester County Courthouse
2 North High Street
West Chester, PA 19380

___ Amend 61 P.S. §408 to delete the President Judge or that judge's designee from service on the Board of Inspectors.

___ Amend Section 408 to permit the President Judge to opt out of membership on the Prison Board of Inspectors.

___ Seek no amendment to 61 P.S. §408.

___ Other (please explain) _____

RETURN TO:

HONORABLE HAROLD F. WOELFEL, JR.
JUDGES CHAMBERS
SNYDER COUNTY COURTHOUSE
PO BOX 217
MIDDLEBURG, PA 17842



JUDGE'S CHAMBERS
SEVENTEENTH JUDICIAL DISTRICT OF PENNSYLVANIA
SNYDER COUNTY UNION COUNTY

HAROLD F. WOELFEL, JR.
JUDGE
COURT OF COMMON PLEAS

August 7, 1996

SNYDER COUNTY COURTHOUSE
P.O. BOX 217
MIDDLEBURG, PA 17842
(717) 837-4238

Representative Daniel F. Clark
Tuscarora Motor Inn Offices
PO Box 225
Mifflintown, PA 17059

Re: Proposed Amendment to 61 P.S. §408 Board of Inspectors of County Prison

Dear Representative Clark:

I appreciated your phone call on August 5, 1996 regarding the above referenced matter. During that conversation you agreed to sponsor a proposed amendment to Section 408 that would enable a president judge of the court of common pleas to terminate a judge's membership in the Board of Inspectors.

Many judges have concerns about a judge's participation on the Board of Inspectors. Some perceive that it places them in an untenable conflict of interest. Others see it as an unconstitutional blurring of the line between the executive and judicial branches of government. Others are frustrated with being sued as a consequence of being a member of the Board of Inspectors for actions that have nothing to do with the judicial function.

I surveyed the president judges in the judicial districts which are affected by this legislation. Forty-seven judicial districts responded to the survey. The survey results are as follows:

Amend §408 to delete requirement of judicial service	19 (44.2%)
Amend §408 to permit president judge to opt out of membership	9 (20.9%)
No amendment to §408.	13 (30.2%)
No opinion.	2 (4.7%)

Thus, 65.1% of the president judges in the judicial districts that responded to the survey favor an amendment to Section 408 by either eliminating service or permitting the president judge to opt

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out of service.

The Pennsylvania Conference of State Trial Judges has voted to seek an amendment to Section 408 that would permit a president judge to opt out of service on the Board. I have enclosed a copy of a proposed amendment which I took the liberty of drafting. Please note that the proposed amendment is in boldface type, and is simply an addition to the existing language in Section 408.

I thank you for your willingness to introduce this proposed legislation. I would be happy to play whatever role you may deem necessary in this area. Please feel free to call upon me if you need any clarification in this matter.

Again, my thanks.

Sincerely,

HAROLD F. WOELFEL, JR., Judge

HFW:cnk

cc: Hon. James Knoll Gardner
Hon. Albert A. Stallone

Sec. 408. Board of inspectors, counties of third to eighth classes; composition; powers and duties; sheriff's responsibility

The persons now holding the following offices, and their successors, in all counties of the Commonwealth of the third, fourth and fifth classes, shall compose a board, to be known by the name and style of inspectors of the jail or county prisons, to wit: The president judge of the court of common pleas or a judge designated by him, the district attorney, the sheriff, the controller, and the commissioners of each of said counties: in which board, and the officers appointed by it, the safe-keeping, discipline, and informing of prisoners, and the government and management of said institution, shall be exclusively vested; and that the present responsibility of the sheriff of each of said counties in regard to the safe-keeping of the prisoners shall cease and determine on their committal to said prison, and such sheriff shall no longer be furnished a residence in said institution. **The foregoing notwithstanding, the president judge of the court of common pleas may elect at any time to terminate the judge's membership on the board by notifying the chairperson and secretary of the board to that effect in writing. The election so made shall remain effective for so long as the president judge making the election shall remain as president judge, and thereafter until rescinded in like fashion by the electing president judge's successor.**

Any county of the sixth, seventh or eighth class may elect by resolution of the county commissioners to be governed by the provisions of this act.

The amendatory language is set forth above **in boldface type**.