Welcome from the Chair

by John L. Gedid

Welcome to the Pennsylvania Bar Association Statutory Law Committee Newsletter. This committee is dedicated to the support, development and improvement of statutory law. We do this through support for PBA leadership on statutory matters, work on improving statutory law in Pennsylvania and education through work with the Pennsylvania Bar Institute on matters of statutory law. We invite all PBA members with an interest or a practice that involves statutory law to join us in our work. With this newsletter the committee intends to increase communication among committee members and to increase communication among PBA members generally.

Statutory Law Committee activities have begun to increase recently. They include:
- Working with legislators to consolidate Pennsylvania statutes so that we are no longer the only state that does not have a system of consolidated statutes;
- Working with the Pennsylvania Bar Institute to produce at least one continuing legal education seminar per year on statutory law;
- Working with the Uniform Law Commission to enable consideration of uniform and model statutes in Pennsylvania.

This newsletter will add another area of activity for the committee. We thank Larry Feinberg, John Lavelle and Wanda Snader for agreeing to serve as co-editors of the newsletter.

All PBA members are invited to join the Statutory Law Committee and to contribute to this newsletter. We hope that you find it useful in your practice.

Co-Editors’ Column

Welcome to the premier issue of the Statutory Law Committee’s newsletter! Earlier this year the committee began discussing providing a newsletter that would educate and inform not only the members of the committee but also anyone else interested in matters relating to statutory law. As a result of those discussions, this newsletter is made available to everyone with access to the Pennsylvania Bar Association’s website. We anticipate this newsletter will be issued on an annual basis in late summer or early fall. If we find ourselves with enough timely and informative articles, we may, on either a regular or ad hoc basis, produce issues in addition to the annual one.

Be sure to read John Gedid’s welcome letter from the chair in which he discusses the...
Co-Editors’ Column

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committee’s purpose and activities. Also in this issue, we provide a profile of this year’s William E. Zeiter Award recipient, Stephen C. MacNett, recently retired general counsel for the Senate Republicans. This award was presented to Steve at the Pennsylvania Bar Institute’s CLE seminar, “Legislative Process, Statutory Drafting, Regulatory Process & Update” on Oct. 6. The profile was written by J. Andrew Crompton, chief counsel for Sen. and President Pro Tempore Joseph Scarnati. The Statutory Law Committee worked with PBI in providing this CLE seminar.

Check out the “Update: Consolidation and Codification” article, written by John Lavelle, that explains consolidation and codification, and highlights three pertinent bills introduced this session: SB 70, SB 1080 and SB 883. A summary of the Consolidated County Assessment Law, Act 93 of 2010, is provided by Wanda Snader. She describes the background of this consolidation effort to show the work that went into this multi-year effort involving the Local Government Commission. Larry Feinberg presents an article about the recent Report of the Advisory Committee on Wrongful Convictions, summarizing the Joint State Government Commission’s extensive report on this timely subject. This newsletter also contains a link to the Local Government Commission’s website where you can search for summaries of all acts signed by the governor since 1993.

We welcome your comments and feedback on this newsletter. In addition, we encourage you to submit articles or suggestions for future issues.

Lawrence G. Feinberg
John Lavelle
Wanda L. Snader

Profile of William E. Zeiter Award Recipient
Stephen C. MacNett

by J. Andrew Crompton

For approximately the last four decades around the Capitol Complex, Stephen C. MacNett’s reputation was simply larger than life. People across the commonwealth and beyond knew of MacNett’s intellectual brilliance and ability to be the consummate hidden hand in government. Steve MacNett, general counsel for the Senate Republicans, was dubbed “the 51st senator,” however even that phrase often seemed insufficient to fully credit his importance.

I always enjoyed quietly observing when someone who was aware of MacNett’s omnipresent reputation first came in personal contact with him (I refer to him as “MacNett” since that was his common greeting when answering a phone call). The person was often confused by MacNett’s appearance. You could literally see the individual’s wheels spinning in his or her head as the person surveyed MacNett from top to bottom thinking, “this is what the famous Steve MacNett looks like?” Fuzzy beard, two pairs of glasses on his head, hundreds of phone message slips jammed into his front shirt pocket and a suit that, well, likely was not freshly pressed.

But that was MacNett’s appeal. He never betrayed his Troy, Bradford County, roots. His automobile, crowded with files and news clips, was never going to be featured in Car Magazine and he was likely never going to be on the cover of GQ. That said, it was MacNett’s brain and unparalleled work ethic that everyone envied. He could master a complex subject matter, down to the very word, in less than a few days. MacNett drafted more statutory law in the Capitol hallways (not to mention in his office/conference room or at his desk on the Senate floor) than almost any individual who has ever worked in Harrisburg.

MacNett would adjust a single legislative clause in a bill in order to shift the meaning ever so slightly. Statutory drafting to those of us who have done it for some time is like art. A seasoned capitol veteran can identify who crafted a certain legislative provision by its tone and context. MacNett was nothing short of Picasso. Up close, some of the works he composed may have looked a bit scrambled, but from a distance they were pure prose magic.

Most who know MacNett know that his service in the Senate began in the page room making deliveries to the Senate members. For context, MacNett was working in the halls of the Capitol prior to my birth … and I am currently 43. Steve graduated from Dickinson College in 1968 and the Dickinson School of Law (not PSU, just ask him) in 1971. He held several different positions in the Senate until being promoted to general counsel to the Senate Republican Caucus, the position he served for approximately 30 years until he retired early this year.

So of course MacNett deserves the William E. Zeiter award. Zeiter has been referred to as a “brilliant lawyer, with an incred-

J. Andrew Crompton is chief counsel to Sen. Joseph Scarnati, the president pro tempore of the Senate.

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UPDATE: Consolidation and Codification Measures in the General Assembly

by John K. Lavelle

For decades, academics, practitioners, legislators and legislative staff have worked in concert to consolidate and codify Pennsylvania law. To date, their efforts have lead to the consolidation and codification of roughly one-third of the commonwealth’s statutes. Since this work seldom receives attention, a brief summary of the concepts is likely beneficial.

A consolidation of laws is the compilation and arrangement according to subject matter of a state’s laws that are in force. A prime example of consolidation took place when the General Assembly enacted the Crimes Code in 1972. Before then, finding the criminal statutes of the commonwealth was a difficult task because they were not located in a single law or even a few statutes. In fact, a legal researcher needed to consult 76 different statutes before coming across all of Pennsylvania’s crimes and offenses. The Legislature solved this problem by consolidating those laws. In other words, it repealed the various criminal statutes and enacted their substance into the Pennsylvania Consolidated Statutes. As a result, a person may find the state’s criminal statutes in one specific place. In turn, the laws became easier to find for everyone using them.

The consolidation not only made Pennsylvania’s criminal statutes easier to locate, it also codified this area of the law. A codification is the systematic collection and arrangement, usually by subject, of the laws of a state. In this instance, the codification produced the Crimes Code. The Crimes Code organized the crimes and offenses of Pennsylvania according to issue and grouped similar offenses together. For example, the sections relating to the criminal statutes on murder, manslaughter and assault are found in the article for offenses involving danger against persons. This logical organization provides a more user-friendly framework for statutory research than existed prior to the codification. As a consequence, the codified version allows greater efficiency in researching criminal statutes.

Three bills have been introduced this legislative session by Sen. Stewart Greenleaf, the majority chairman of the Senate Judiciary Committee and a long-time advocate of consolidating and codifying Pennsylvania statutory law, that include consolidation and codification provisions. The first is Senate Bill 70, which is currently in the Senate Urban Affairs and Housing Committee. The legislation proposes to consolidate and codify the commonwealth’s statutory provisions relating to hotels. In the bill, this occurs by moving the substance of the various provisions and statutes into Title 48, the housing and lodging title of the Pennsylvania Consolidated Statutes.

If enacted, the legislation would not change substantive law. It will only modernize its form. One example of this modernization takes place by breaking up run-on sentences into shorter, more comprehensible ones where possible. The consolidation process also adds subsection headings to aid research, and deletes or replaces unnecessary or outdated terms like "heretofore" and "aforesaid." In short, SB 70 updates the format and style of the statutes regarding hotels to enhance clarity for the reader.

Sen. Greenleaf also introduced the second measure, Senate Bill 1080. This bill consolidates and codifies statutes and provisions relating to certain legislative service agencies into Title 46. Unlike SB 70, however, the bill changes the substance of the law regarding this topic. It seeks to combine several legislative research agencies into one entity that serves the entire General Assembly. Still, the bill puts existing law into a more readable format in a manner similar to the consolidation and codification in SB 70. SB 1080 is currently in the Senate Intergovernmental Affairs Committee.

The most noteworthy item on the Legislature’s agenda regarding statutory consolidation and codification is Senate Bill 883. According to Senate Judiciary Committee’s bill analysis, this bill adds, among other things, “provisions relating to Commonwealth documents, including the filing of documents for publication in the Pennsylvania Bulletin and in the Pennsylvania Code” to Title 2, which will be known as the Administrative Procedure Code. This legislation also repeals two acts and several portions of acts that address the publication of commonwealth documents. However it does not change substantive provisions of law on that topic. The rules, regulations and decisions made under current law will also remain in full force and effect upon the enactment of this consolidation and codification measure. The Senate gave SB 883 first consideration on Sept. 20, and it is now in the Senate Appropriations Committee.

The three bills are at or near the beginning of the legislative process. In order to become law, each needs to be voted out of committee and considered on at least two more days in the Senate, passed by the House of Representatives and then receive the governor’s approval. This may only occur before the General Assembly adjourns this session in November 2012. If it does, the commonwealth will take a step closer to consolidating and codifying its statutes. This is a worthy and achievable goal that would benefit everyone using Pennsylvania statutory law.

John K. Lavelle is a drafting attorney for the Legislative Reference Bureau.

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Profile of William E. Zeiter Award Recipient Stephen C. MacNett

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Steve MacNett is a thinker and a writer with few equals. Words matter, and no one knows it more than he. And thousands of his words are preserved throughout Pennsylvania statutes, just where they belong.

Wanda L. Snader is associate legal counsel for the Local Government Commission, a bipartisan, bicameral legislative service agency providing research and legislative drafting assistance to members and staff of the Pennsylvania General Assembly on matters relating to local government.

**Act 93 of 2010 — Consolidated County Assessment Law**

*by Wanda L. Snader*

This act amended Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes (Pa.C.S.) by, among other things, adding a chapter titled “Consolidated County Assessment Law” for the purposes of consolidating several real property assessment statutes into a combined whole, removing outdated language and codifying pertinent case law. This act repealed Act 348 of 1931, referred to as the “Third Class County Assessment Board Law,” “The Fourth to Eighth Class and Selective County Assessment Law,” and portions of “The County Code.” Furthermore, it repealed inconsistent acts as well as “The General County Assessment Law” as the law applies to counties of the second class A through the eighth class.

The Assessors’ Association of Pennsylvania (AAP) — an affiliate of the County Commissioners Association of Pennsylvania (CCAP) — formed an Assessment Reform Committee in 2001. The AAP charged the committee with creating a legislative proposal that would consolidate the current assessment laws, pertaining to counties of the second class A through the eighth class, into one new uniform assessment law. The 12-member committee was made up of a wide array of real estate assessment personnel (assessors and administrators) from various counties throughout the commonwealth.

Two Local Government Commission staff persons, appointed as the legislative staff to serve on the committee, played a major role. Due to the technical nature of the work involved with consolidating the various assessment laws, a small subcommittee, including Commission staff, took on the tasks of preparing the initial draft of the consolidated assessment law and a section-by-section commentary of the legislation. Staff also prepared the disposition and derivation tables.

CCAP requested the members of the Local Government Commission to sponsor the final legislative proposal. The Commission first introduced the Consolidated County Assessment Law as House Bill 2273 during the 2005-06 Legislative Session. The bill was reintroduced as Senate Bill 918 during the 2009-10 legislative session and was signed into law on Oct. 27, 2010, as Act 93 of 2010. The Consolidated County Assessment Law is codified in Title 53 of the Pennsylvania Consolidated Statutes (Municipalities Generally) at Section 8801 et seq.

**UPDATE: Consolidation and Codification Measures in the General Assembly**

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5  S.B. 70, P.N. 55, 195th General Assembly (2011).
7  S.B. 1080, P.N. 1255, 195th General Assembly (2011).
Joint State Releases Report on Wrongful Convictions

by Lawrence G. Feinberg

On Sept. 20, the Joint State Government Commission released the Report of the Advisory Committee on Wrongful Convictions. This report was written pursuant to 2006 Senate Resolution 381, whose prime sponsor was Sen. Stewart J. Greenleaf. An advisory committee consisting of 53 experts directed the research on the report under the able and dedicated leadership of professor John T. Rago of the Duquesne University School of Law. The comprehensive 316-page report contains a wealth of information and nine pieces of legislation on a topic that is getting increasing attention from lawmakers across the nation. The report was staffed by staff attorneys Ronald D. Grenoble, Yvonne L. Hursh and Lawrence G. Feinberg. The full report can be found through http://jsg.legis.state.pa.us/publications.cfm.

The following summary of the report is closely based on its Executive Summary:

SR 381 directed the Joint State Government Commission “to study the underlying causes of wrongful convictions.” The resolution further directed the commission to establish an advisory committee to study the underlying causes of wrongful convictions and reach a consensus on recommendations. The advisory committee divided into subcommittees on legal representation, investigation, redress and science. Several Pennsylvania exoneration cases were informally reviewed. 1 A number of the advisors were personally familiar with some of these cases.

The subcommittees deliberated mostly on recommendations that have been and continue to be considered by policymakers in other states. Some of these recommendations have been adopted in some fashion by more and more jurisdictions, as shown by six tables included as appendices to the report. After all the subcommittees completed their deliberations, their recommendations were shared with the full advisory committee. The full advisory committee was afforded an opportunity to comment on all the proposals. (Comments of advisors criticizing the proposals appear in appendix J of the report.)

While there was some consensus on these recommendations, members remain sharply divided on the advisability of adopting some or all of these recommendations. Some advisors question whether a foundation has been established to recommend any of these proposals and fear that their implementation could create more injustice. Conversely, the advisors who endorse these recommendations are persuaded that well-considered and well-researched initiatives to prevent miscarriages of justice should be adopted when they are sensible and relatively easy to implement, as demonstrated by law enforcement and prosecutors in a variety of jurisdictions.

“[T]he most fundamental principle of American jurisprudence” is that “an innocent man not be punished for the crimes of another.”2 The source of public confidence in our criminal justice system resides in its ability to separate those who are guilty from those who are not. The criminal justice system in Pennsylvania is finely tuned and balanced and almost always delivers reliable results. However, no such system will achieve perfection. Due process does not require that every conceivable step at whatever cost be taken to eliminate the possibility of convicting an innocent person. Even so, the system cannot routinely accept the conviction of an innocent person without being challenged to consider measures to reduce the likelihood of error and grant redress to victims of errors. Accepting this challenge as fully and as reasonably as we can further strengthens public confidence in the integrity of our criminal investigations and convictions.

Since 1989, 34 states and the District of Columbia have seen 273 post-conviction exonerations based on DNA evidence alone. These exonerations represent cases where the conviction has been indisputably determined to be erroneous through the use of this evidentiary tool based on advanced biological research. They represent tragedy not only for the person whose life is irreparably damaged by incarceration for a crime he or she did not commit, but also for the victim since each wrongful conviction also represents the failure to convict the true perpetrator.

... each wrongful conviction also represents the failure to convict the true perpetrator.

These cases impel us to take measures to sustain both the integrity of criminal convictions based on proof beyond a reasonable doubt. If experience is the name we give our mistakes, these exonerations provide a remarkable opportunity to examine our practices and policies, and to correct them to the best of our ability. Pennsylvania is not alone in the matter of tending to conviction integrity. As the report makes clear, we are the beneficiaries of an expanding body of work by a wide variety of legislative, judicial and executive initiatives undertaken to minimize the risk of conviction error.

Causes of wrongful convictions are commonly listed as “mistaken eyewitness identifications; false confessions; perjurious informant testimony; inaccurate scientific evidence; prosecutorial and defense lawyer misconduct; and inadequate funding for defense services.”3 “[A]t this juncture, the primary causes of wrongful convictions are well understood.”4

The inquiry into the causes of mistaken convictions challenges long-accepted assumptions about the reliability of eyewitness identifications, confessions and practices within the criminal justice system.

Lawrence G. Feinberg is an attorney with the Joint State Government Commission, the central research agency of the Pennsylvania General Assembly. He is a former chair of the Statutory Law Committee.

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Patients can often be mistaken in their identifications of perpetrators, especially when influenced, often unintentionally, by subtly suggestive practices in lineups, photo arrays and showups. Interrogation techniques applied to suspects are designed to obtain a confession and sometimes “work” against innocent suspects, especially those who are inexperienced, suggestible, unintelligent, mentally defective or anxious to end the interrogation. Many defendants cannot afford a private criminal defense attorney and may therefore receive less thorough representation by overworked public defenders or appointed counsel. In many places, this lack of adequate representation is due to severe underfunding of public defender offices and underpayment of appointed indigent defense counsel. Prisoners seeking post-conviction testing of biological evidence often encounter unreasonable obstructions to DNA testing or procedural bars, even when the evidence was not tested before the conviction or was tested by outdated methods.

Biological evidence is available in only a small number of violent crimes. There is every reason to believe that the factors contributing to wrongful convictions occur with comparable regularity in criminal cases where DNA is absent. While it is impossible to estimate confidently how many innocent people have been imprisoned, it would be indefensible to say that every conviction or acquittal is factually correct. To this end, we must pay close attention to the lessons contained in these DNA cases and adopt practical and workable measures that advance conviction integrity by minimizing the risk of error. This report attempts to bring the General Assembly’s attention to policies for Pennsylvania that may reduce the likelihood that innocent people will suffer imprisonment for crimes they did not commit, while further ensuring that the actual perpetrator of the crime is brought to justice.

The charge of SR 381 calls for an inquiry that in other contexts is called a failure analysis, much like a professional inquiry into a plane crash, or a routine surgical procedure that results in the patient’s injury or death. In a failure analysis, the focus is on determining what went wrong in order to prevent recurrence. We can rightly celebrate the fact that a great majority of criminal cases reach a just outcome, but the focus of this report is necessarily on the reasons why justice miscarries in a minority of cases.

Despite policy differences, the advisory committee shares a number of interests central to maintaining public confidence in conviction integrity. Members agree that no innocent person should be punished for a crime he or she did not commit. Members want to promote the interests of public safety by making the guilty accountable for the crimes they commit. Members want our policies and practices to justify our confidence in the testimony of eyewitnesses and confessions made by the accused and used at trial. Members share a keen sensitivity to the victims of crimes and the need to minimize the risk that a victim would be called upon to endure a second trial, much less suffer the anguish and uncertainty that comes from a post-conviction DNA exoneration. Members do not want to artificially add challenges to the difficult tasks our police and prosecutors encounter every day in dealing with crimes and victims.

[N]one of the recommendations in this report present an outlier position. These recommended policies and practices are proven to be good for the accused, good for law enforcement, good for victims and good for our commonwealth.

Members seek to have the full and robust use of valid science throughout the course of our criminal investigations, prosecutions and post-conviction reviews. And all members expect conduct from every individual and office to be of the highest ethical and professional standards of conduct that we expect from every participant in the criminal justice system.

In full consideration of all of the viewpoints and passions stirred by the subject of this report, the majority of the advisory committee believes the recommendations contained in it are tested, timely, reasonable, practical and affordable. Through careful comparisons with similar efforts undertaken around the country, none of the recommendations in this report present an outlier position. These recommended policies and practices are proven to be good for the accused, good for law enforcement, good for victims and good for our commonwealth.

Summary of Key Proposals

Eyewitness Identification

The rules of criminal procedure should require defense counsel in capital cases to receive training on evidence relating to eyewitness identification.

The Pennsylvania statutes should require “blind” administration of lineups and photo arrays. That is, the person who conducts them should not know the identity of the suspect or, in a photo array, should be blocked from seeing which photo the witness is viewing until after he or she makes an identification.

Confessions

A rule of criminal procedure should require defense counsel in capital cases to be educated on evidence relating to confessions.

The Pennsylvania statutes should require custodial interrogations to be electronically recorded, with a co-extensive wiretap exception for law enforcement.

Indigent Defense Services

Defense services for indigency should be standardized throughout Pennsylvania.

The Pennsylvania statutes should transfer the responsibility for funding in-
digent defense services from the counties to the Commonwealth. Compensation for defenders should be made adequate and substantially uniform.

Informant Testimony
Judges should caution a jury when testimony from a jailhouse informant is presented. Law enforcement should electronically record the informant’s statement and, if possible, electronically record the incriminating statement made to a jailhouse informant.

The Pennsylvania statutes should:
1) mandate timely disclosure of certain information to the defense when the prosecution seeks to introduce testimony from an informant that the accused incriminated himself and the evidence from the informant was obtained while investigating a felony.
2) require a hearing in any capital case before admitting testimony from an informant that the accused incriminated himself.

Prosecutorial Practice
Prosecutorial offices should:
1) implement internal policies that encourage ethical conduct.
2) implement and enforce internal discipline when ethical standards are violated.
3) improve internal oversight to ensure the integrity of investigations, evidence development, and trial and post-conviction practices.
4) adopt clear guidelines and implement appropriate sanctions for purposeful or otherwise egregious prosecutorial misconduct.

The Pennsylvania Supreme Court should adopt proposed amendments to Rule 3.8 of the Pennsylvania Rules of Professional Conduct, relating to evidence of wrongful conviction. The amendments have been endorsed by the PBA.

Post-conviction Relief
The Post Conviction Relief Act (PCRA) should be amended:
1) to eliminate any time limit to obtaining post-conviction relief based upon a DNA test if the test could exonerate the petitioner.
2) to remove imprisonment as a prerequisite for post-conviction DNA testing.
3) to clarify the right to petition for post-conviction DNA testing.
4) to permit DNA test results to be compared to profiles in the state DNA database before and after conviction.
5) to allow courts to summarily dismiss frivolous or repetitive petitions for DNA testing and authorize courts to adjudicate petitions for DNA testing in the interests of justice.
6) to extend the time limit for certain petitions for post-conviction review from 60 days to one year.

Redress
The Pennsylvania statutes should:
1) allow claims for damages against the commonwealth by those who have been wrongfully convicted and imprisoned if their actual innocence is established.
2) provide for automatic expungement of the criminal history record for those found eligible by Commonwealth Court.
3) establish a commission to review reforms adopted by other jurisdictions to ensure conviction integrity and investigate wrongful convictions of exonerees in Pennsylvania to determine their causes and how to avoid recurrence.
4) extend transitional services currently available to rightfully convicted prisoners to exonerees as well.

Science
The Pennsylvania statutes should:
1) require accreditation of forensic laboratories operated by the commonwealth and its municipalities.
2) generally require the preservation of biological evidence relating to a criminal offense.
3) provide criminal penalties for intentional destruction of biological evidence that is legally required to be preserved.
4) establish a Forensic Advisory Board to:
   i) advise the commonwealth on the configuration of forensic laboratories and the delivery of their services to state and local government.
   ii) offer continuing education relating to forensic science to investigators, attorneys, scientists, and others involved in criminal justice.
   iii) timely investigate allegations of professional negligence and misconduct affecting forensic analysis.

For an account of these cases, see John T. Rago, A Fine Line Between Chaos and Creation: Lessons on Innocence Reform from the Pennsylvania Eight 12 Widener L. Rev. 359 (2006).
Have you ever wondered whether a particular bill was enacted into law? Or are you curious about seeing an entire list of bills that were enacted into law, say, in 2005? You’re in luck! Check out the provided link to go to the search page on the Local Government Commission’s website where you will find summaries of acts from 2011 back to 1993. The Local Government Commission provides a summary of each bill signed into law by the governor. The summaries, however, are FOR INFORMATION PURPOSES ONLY and are not an official compilation or restatement of the complete contents of the acts summarized.

To initiate a search, click on the link below, type in your search term(s) in the SEARCH WORD(S) box and then click on SEARCH. Be careful when using quotation marks in your search terms. If the quotation marks themselves are in the summary, using the quotation marks in the search box will produce the summary in the results page, but if the quotation marks are NOT used in the summary, your search will not produce records. For example, if you enter

“third class city”

in the search box for 2011, you will not retrieve any records. But if you enter

third class city

in the search box, the search will retrieve records since those three words, without the quotation marks, are used in a summary.

www.lgcpa.org/search.cfm

Local Government Commission Online Summary of Acts

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