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## THE DAUPHIN COUNTY COURT ORIGINS OF THE COMMONWEALTH COURT OF PENNSYLVANIA

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The Commonwealth Court of Pennsylvania which came into existence in 1970 is unique among state intermediate courts in the United States. It is the only state intermediate appellate court which specializes in governmental or public law. Moreover, its jurisdiction as an intermediate appellate court is novel in that approximately 10% of its caseload is in its original jurisdiction.

To a considerable extent, the jurisdictional features of the Commonwealth Court are due to the unique role played by the Dauphin County Court before 1970. As early as 1811 with the Act of March 30 relating to the settlement of public accounts and the payment of public monies, the General Assembly vested jurisdiction in the Dauphin County Court. Later the court was given exclusive jurisdiction of questions concerning the nomination of candidates for state offices. As noted by Clinton County Judge (Chair of the PBA's Committee for Implementation of the 1968 proposed Judicial Article that created the Commonwealth Court) Abraham Lipez in *History of the Commonwealth Court* (in Volume 1 of the *Pennsylvania Commonwealth Court reports*): The Act of April 7, 1870, "recognized the need for a court with statewide jurisdiction at the seat of government." The Dauphin County Court was the obvious forum to assume such jurisdiction and between 1870 and 1970 the Dauphin County Court with its Commonwealth Docket became increasingly important in the development of governmental or public law in Pennsylvania.

The importance of that development is evident in Volume 1 of the *Dauphin County Reports* published in 1898; the title of that first volume is "The Decisions of the Judges of the 12<sup>th</sup> Judicial District and the Decisions of the Heads of Department of the State Government." Interestingly, two of the first four cases in volume 1 are a disappointed bidder case (decided by Judge McPherson) involving the state Board of Commissioners of Public Grounds and Buildings with the issue being what is the meaning of the term "lowest responsible bidder" and a request for a preliminary injunction (denied by Judge Simonton) to restrain the Capitol Building Commission from letting contracts for the proposed new Capitol Building.

As noted by President Judge Hargest in his 1935 *History of the Court of Dauphin County*, former Attorney General of Pennsylvania William Schnader had observed that "Dauphin County Court [was] especially commissioned by the [Act of May 26, 1931] as the forum in which Commonwealth cases shall be heard in the first instance." Thus, the Commonwealth Docket of the Dauphin County Court contained cases involving appeals (most commonly appeals involving state taxes) and original jurisdiction matters involving actions against state government (usually via equity or mandamus actions) or actions by state government (usually via equity actions).

The increase in the number of state agencies in the decades after 1935 and the emergence of a more litigious society by the 1960's lead to calls for a second intermediate appellate court in Pennsylvania. Dauphin County President Judge Kreider is quoted in Don Sarvey's *The History of Law and Lawyers in Dauphin County* as saying that the "flood of litigation" involving state issues had become "an Intolerable burden" and the Dauphin County Court "simply could not handle expeditiously the disposition of these important State cases."

Throughout the United States in the late 1960's and early 1970's, numerous states, particularly the more populous states, encountered this same rise in litigation and the need for additional appellate courts. The delegates to the Pennsylvania Constitutional Convention of 1967-68 met in Harrisburg and addressed this need in a manner which was unique in the United States. The delegates, according to Judge Lipez "envisioned, not only a court which would take over the Commonwealth jurisdiction of the Dauphin County Court, but a third appellate court which would relieve the increasingly heavy burdens on [the Pennsylvania Supreme Court and the Pennsylvania Superior Court]."

Instrumental in creating this third appellate court were two distinguished Dauphin County lawyers, Robert E. Woodside and James S. Bowman. Woodside had a distinguished career as a state representative, Dauphin County Court judge, Pennsylvania Attorney General and Superior Court judge; he was a delegate to the Constitutional Convention where he was the co-chair of the subcommittee that wrote the Judicial Article for the new Constitution and laid the foundation for the creation of the Commonwealth Court in 1970. Bowman was a Dauphin County Court judge from 1964 to 1970 who was recognized as an outstanding jurist with special expertise in jurisdictional and procedural matters.

Several constitutional amendments, including the Judiciary Article creating the Commonwealth Court as of January 1, 1970, were approved by the Constitutional Convention and submitted to the electorate and approved on April 23, 1968. The Pennsylvania Bar Association appointed an Implementation Committee to assist in the implementation of the Judiciary Article; the committee included Harrisburg attorney Gilbert Nurick. Two sub-committees were formed to make recommendations concerning the Commonwealth Court's original and appellate jurisdiction. The chair of the subcommittee on original jurisdiction was Judge Bowman of the Dauphin County Court.

The proposed recommendations of the Implementation Committee were approved by the Pennsylvania Bar Association and some of its recommendations were incorporated in the Commonwealth Court Act, Act of January 6, 1970 and other recommendations were incorporated in the Appellate Court Jurisdiction Act of 1970, Act of July 31, 1970.

Although the seven judges of the Commonwealth Court, including James S. Bowman as President Judge, were appointed by Governor Shafer and quickly confirmed by the Senate in April of 1970 followed by the court's investiture on April 15, 1970, the Commonwealth Court Act provided that the court could not perform its judicial duties until the Governor proclaimed its readiness to do so. The Governor's proclamation did not occur until September 1, 1970 resulting in an interesting sequence of events.

Volume 93 of the Dauphin County Reports includes 1) two opinions filed by Dauphin County Court Judge Bowman on April 15, 1970, the day he was sworn in as a Commonwealth Court judge. Each of these opinions contain a notation by President Judge Kreider that the foregoing opinion was prepared by Judge Bowman before his resignation as a Dauphin County Court judge; 2) three opinions (involving a contract dispute, a tax case and a domestic relations dispute) by Judge Bowman after April 15, 1970 with similar notations by President Judge Kreider; and 3) four opinions by newly-confirmed Commonwealth Court judges Crumlish (in a state retirement board case), Wilkinson (in a state sanitary water board case), Mencer (in a state harness racing commission case) and Manderino (in a case involving the state prevailing wage law and the Chambersburg Area Middle School). Although the Commonwealth Court had not received a gubernatorial proclamation before September 1, 1970, several of the judges were busy during the summer of 1970 becoming acquainted with the court's jurisdiction thanks to the obvious cooperation of President Judge Kreider and the Dauphin County Court.

Interestingly, Volume 93 also contains two opinions by visiting Adams County Judge John MacPhail who later was appointed to the Commonwealth Court and served from 1978 to 1988.

With the Commonwealth Court being open for business on September 1, 1970, numerous cases were transferred from the Commonwealth Docket in the Dauphin County Court to the new Commonwealth Court situated in the top floor of the South Office Building (now the Leroy Irvis Office Building) in the Capitol complex. The 1970 transfer docket of the Commonwealth Court for the period from September 1 to December 31, 1970 contains 1014 cases; an overwhelming number of those transferred cases were from the Dauphin County Court and an overwhelming percentage of those cases were tax cases. Apparently, the Dauphin County Court had a tradition of allowing the attorneys in the state tax cases to proceed at their own pace. The hope apparently was that the cases would eventually settle, which most of them eventually did. That tradition was continued for some time in the Commonwealth Court by President Judge Bowman.

Not all of the Commonwealth Court's 1970 transfer docket involved transfers by the Dauphin County Court. Numerous cases were transferred to the Commonwealth Court by the Pennsylvania Supreme Court after September 1, 1970. These were usually cases which had not been briefed or argued in the Supreme Court as of that date. Some cases, however, which had been briefed but not yet argued in the Supreme Court were retained by the court and not transferred to the Commonwealth Court. See, for example, *Commonwealth v. Emhart Corp.*, 443 Pa. 397 (1971).

#### CONCLUSION

The uniqueness of the Commonwealth Court of Pennsylvania is to a great extent due to its origins in the Commonwealth Docket of the Dauphin County Court. The decision to create a second intermediate court which would specialize in governmental or public law was made in Harrisburg at the Constitutional Convention of 1967-68 and was greatly influenced by Harrisburg attorney Robert E. Woodside and Dauphin County Court Judge James S. Bowman. The ease of the 1970 transfer of cases from the Dauphin County Court to the Commonwealth Court was undoubtedly due to the close relationship between President Judge Kreider of the Dauphin County Court and President Judge Bowman of the Commonwealth Court.