

Delaware County, DCCC asserts that the lack of connection between Philadelphia on the one hand and either DCCC or the events underlying this action on the other makes venue here improper.¹

DISCUSSION

The crux of the Objections is whether venue is appropriate in Philadelphia. Because DCCC is a political subdivision located in Delaware County, venue is limited to that county, and the Court need not consider DCCC's other objections.

Under Pennsylvania Rule of Civil Procedure 2103(b), "an action against a political subdivision may be brought only in the county in which the political subdivision is located." Because there is no debate that DCCC is located in Delaware County, it is necessary to ascertain whether DCCC is a political subdivision.

Pennsylvania statute defines "political subdivision" as "[a]ny county, city, borough, incorporated town, township, school district, vocational school district and county institution district." 42 Pa. C.S. § 1991. In Community College of Allegheny County v. Seibert, 144 Pa. Commw. 616, 601 A.2d 1348 (1992), aff'd sub nom. Seibert v. Community College of Allegheny County, 533 Pa. 314, 622 A.2d 285 (1993), the Commonwealth Court considered whether a community college was a "political

¹ In its response to the Objections, the Committee points out flaws in the Objections that it claims required the Objections' dismissal. This is not proper procedure, as defects in preliminary objections should be raised by preliminary objections to the original preliminary objections, and the Court may not consider the Committee's arguments on the Objections' defects. See Goodrich Amram 2d § 1032(a):5 ("Objections to the untimeliness of preliminary objections are also waived by failing to file preliminary objections to the preliminary objections.").

subdivision” and therefore entitled to sovereign immunity protection. After careful review, the court concluded that community colleges fell within the scope of this term:

In 1971, former Attorney General J. Shane Creamer issued an official opinion that community colleges are political subdivisions for the purpose of the Act of July 9, 1971, P.L. 201 (Act 31), which permits political subdivisions and authorities to purchase materials, supplies and equipment off contracts of the Department of Property and Supplies (now the Department of General Services).

The Attorney General reasoned that:

Since a community college is, by definition, established and operated by a local sponsor which must consist of a school district, municipality (*i.e.* city, borough, town, township or county) or county board of school directors or any combination thereof, each of which is included within the definition of a political subdivision, under the Statutory Construction Act, *supra*, it follows that . . . community colleges are political subdivisions within the meaning of Act No. 31.

In addition to being sponsored solely by political subdivisions, community colleges under the CC Act are expressly granted the right to participate in various other statutory schemes which are normally reserved for political subdivisions. For example, Section 1913-A(g) of the CC Act, 24 P.S. § 19-1913-A(g), provides that the community colleges shall be eligible for participation in the State Public School Building Authority Act and the Municipal Authorities Act of 1945. Furthermore, all administrative personnel, faculty and other employees of the community colleges are eligible for inclusion in the Public School Employees’ Retirement System of Pennsylvania and the Pennsylvania State Employees’ Retirement System. 24 P.S. § 19-1913-A(f).

In *Szmodis*, 49 Pa. D. & C.3d at 290, Judge Moran wrote that “[s]imple logic would appear to require a finding that a community college, as a tax supported institution created by local government units under a grant of authority by the state legislature, is a local governmental agency.” We agree.

Accordingly, we conclude that a community college is a local agency for the purpose of governmental immunity.

144 Pa. Commw. at 622-24, 601 A.2d at 1351-52 (citations and footnotes omitted).

Although the Committee does not confront Seibert directly, it directs the Court’s attention to Northampton County Area Community College v. Dow Chemical, U.S.A., 389 Pa. Super. 11, 566 A.2d 591 (1989), aff’d, 528 Pa. 502, 598 A.2d 1288 (1991), where the court considered whether the plaintiff could invoke the privilege of nullum tempus to override the applicable statute of limitations. The court found that the plaintiff was not a state entity and therefore was bound by the statute of limitations:

[W]e recognize that the privilege of nullum tempus does not, in the absence of express provision, usually extend to municipalities, counties, or other political subdivisions, unless these entities seek to enforce strictly public rights and obligations imposed by law. While we agree with the College that public education is a public right, the College does not argue that it is an integral part of any political subdivision. We conclude that it is as independent of municipalities and political subdivisions as it is independent of the Commonwealth.

389 Pa. Super. at 24, 566 A.2d at 597 (citations omitted).

The Court could, perhaps, consider Northampton County persuasive in the absence of other binding authority. However, the Seibert court specifically examined and distinguished Northampton County, stating that “[b]ecause governmental immunity was not an issue in Northampton County, this statement is not persuasive in the present case.” 144 Pa. Commw. at 621, 601 A.2d at 1350. Indeed, even the most superficial scrutiny of Northampton County reveals that the court limited its discussion narrowly to the question of nullum tempus privilege and was unconcerned with how to characterize community colleges in other contexts. Thus, DCCC is a political subdivision, and venue in this matter is limited to Delaware County.²

² Because venue is proper in Delaware County, the Court will transfer this matter in lieu of dismissing the Committee’s action. See Pa. R. Civ. P. 1007(e) (“If a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall not be dismissed but

CONCLUSION

Because venue in this matter is proper only in Delaware County, the Court has sustained the Objections and order this matter transferred to that county.

BY THE COURT:

JOHN W. HERRON, J.

Dated: June 11, 2002

shall be transferred to the appropriate court of that county.”).

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

OFFICIAL COMMITTEE OF UNSECURED	:	
CREDITORS OF DOWNINGTOWN INDUSTRIAL	:	October Term, 2001
AND AGRICULTURAL SCHOOL,	:	
Plaintiff	:	No. 3513
	:	
v.	:	Commerce Case Program
	:	
DELAWARE COUNTY COMMUNITY COLLEGE,	:	Control No. 010890
Defendant	:	

AND NOW, this 11th day of June, 2002, upon consideration of the Preliminary Objections of Defendant Delaware County Community College to the Complaint of Plaintiff Official Committee of Unsecured Creditors of Downingtown Industrial and Agricultural School asserting improper venue and the Plaintiff's response thereto, and in accordance with the reasons set forth in the contemporaneously issued Opinion, it is hereby ORDERED that the Objections are SUSTAINED, and the action is hereby transferred, at the cost of Plaintiff, to the Court of Common Pleas of Delaware County pursuant to the provisions of Pennsylvania Rule of Civil Procedure 1006(e).

BY THE COURT:

JOHN W. HERRON, J.