

When the Government Competes With the Private Sector

It may be somewhat of a shock as to how often government taxpayer money competes with the private sector. When it is something sophisticated, like space flight, we do not think much about it. After all, there are components of rocket science which the private sector just is not able to do. There may also be national security concerns.

How different is the situation of public sector competition with private entrepreneurs when it is a government-financed restaurant competing with high-end restaurants in the same small town? Only recently I have seen many signs for Le Jeune Chef in Williamsport, Pennsylvania. Le Jeune Chef is a restaurant run by Pennsylvania College of Technology. It is used, at least we are told, as a training program for culinary art students. However, would it not be possible for those students to be outsourced so they could intern at many of the fine restaurants in the community? Is it really necessary to compete directly with struggling high-end restaurants in the area? Law and medical offices accept interns from local colleges all the time. The taxpayer-supported colleges and universities around the country usually do not set up their own hospitals or law firms. Wait a minute – there are plenty of publically financed university and college affiliated hospitals that compete with private hospitals; aren't there? Most hospitals are subject to antitrust laws, and in Pennsylvania, for example, competition between hospitals is encouraged, at least in theory. Only recently the Commonwealth opposed a merger of hospital systems that would reduce private competition.

Enter the Municipal Authority Act of 1945. 53 Pa. C.S. § 306A(b)(2) specifically disapproved of “any project or projects which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes.” The Act was amended in 2001, and is now codified at 53 Pa. C.S. § 5607, Purposes and Powers. Subsection (b)(2) of 5607 indicates that the purpose and intent of the chapter is to benefit the people of the Commonwealth by increasing commerce, health, safety and prosperity. It is the explicit purpose of the Commonwealth not to “unnecessarily burden or interfere with existing businesses by the establishment of competitive enterprises....” The limitation on state competition with the private sector does not apply to garbage collection, industrial development projects, authorities created for the purpose of providing business improvements and administrative services, and - you guessed it - hospitals.

The question, the courts often ask, is whether a municipal corporation is performing “governmental” or “proprietary” functions. A governmental function is one performed for public purposes exclusively for its public, political or municipal character. A proprietary function is one that traditionally or principally has been performed by private enterprise. “In determining whether activity is governmental or proprietary, the Court will consider whether it:

(1) is one a government is not statutorily required to perform; (2) also may be carried on by private enterprise; and (3) is used as a means of raising revenue.”

Once upon a time, I handled a case for a golf pro who was sore about competition from the county golf facility at Allenwood, where the golf pro shop was allegedly underwritten by taxpayer money. I lost that case. It was a long time ago, probably before the Amendments to the Act.

The serious question is whether it is good for the community and those who invest their money, lives and resources to face taxpayer-funded competition? Certainly it is nice to have places around like Le Jeune Chef, where the ambiance, the food, the wine and the service is, no doubt, exemplary. Pardon me for being a party pooper, but I worry about the women and men in this community who borrow money and break their backs in the often 24/7 restaurant business now having to face an aggressive marketing campaign utilizing my taxpayer money. Isn't there a better way to train the fine future restauranteurs at the Pennsylvania College of Technology?

Government, I have learned through my work on the Patient Safety Authority, and in other places, has a funny way of growing and expanding like a well-fed amoeba. I remember looking at some of those Patient Safety Authority budgets as they ballooned through the years, wondering why the best computers and websites were absolutely necessary to the crucial job of patient safety? When I voted against a double digit budget increase on the Patient Safety Authority during the Great Recession of '08 to 2010, it seemed to make a lot of my fellow Board members less than happy.

Does it matter whether Le Jeune Chef makes money for the college or is a loss leader? Would students not come to the college if it did not have its own fancy-dancy, upscale, expensive restaurant? Would it help or hurt the community if those students did not come here, or if they interned at local restaurants? These are all legitimate questions, and no doubt there is another side to this coin.

Simply stated, it is important for taxpayers to be faced with transparent government. Where the bucks come from, where they go, and how those decisions are made are crucial components of a successful and well-ordered society.

Only recently, Lycoming County Commissioners stated that they will apparently share with the public what happens to the hotel tax money that the Chamber of Commerce spends. That is a good thing. There are a number of public reports on the subject, which I have personally reviewed over the years, but there still remain unanswered questions. All the loans that have been given by the Chamber, based upon hotel tax money should be revealed along with their terms. Is it okay for those who are not a member of the Chamber of Commerce to miss out on the money apportioned to the Tourist Bureau? Does that even happen? Answering questions is good government.

There should be a public discussion of when it is acceptable for taxpayer money to sponsor competitors to local businesses. A discussion is all I am asking for.

The next time you go out for a great meal at Le Jeune Chef, ask yourself whether you are taking money out of the pockets of other hardworking taxpayers.

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