

30-1256-CD  
WALLACETON BOROUGH -vs- WALLACEION MUNICIPAL AUTHORITY

Date: 10/31/2000

**Clearfield County Court of Common Pleas**

NO. 0050352

Time: 02:09 PM

**Receipt**

Page 1 of 1

Received of: Kesner, Kim C (attorney for Wallacetton Borough) \$ 0.00

Zero and 00/100 Dollars

Case: 2000-01256-CD	Plaintiff: Wallacetton Borough	Amount
Civil Complaint		0.00
Paid Prior to FullCourt		
<b>Total:</b>		<b>0.00</b>

Payment Method: Cash

William A. Shaw, Prothonotary/Clerk of Courts

Clerk: OLDCASE

By: \_\_\_\_\_  
Deputy Clerk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

⑩ WALLACETON BOROUGH,

Plaintiff

VS.

⑪ WALLACETON MUNICIPAL  
AUTHORITY,

Defendant

\*

\*

\*

\* No.: 00-1056 -CD

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\* Type of Case: Civil

\*

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\* Type of Pleading: Petition

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\* Filed on Behalf of: Plaintiff

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\* Counsel of Record for this Party:

\*

\* Kim C. Kesner, Esquire

\* Supreme Court I.D. #28307

\* 23 North Second Street

\* Clearfield, PA 16830

\* Phone: (814) 765-1706

\* Fax: (814) 765-7006

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\* Other Counsel of Record:

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CJA

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

WALLACETON BOROUGH

VS.

WALLACETON MUNICIPAL AUTHORITY

PETITION and RULE RETURNABLE

NO. 00- CD

**FILED**

REC'D OCT 09 2000  
SAC  
\$10.00 Cash Keener  
William A. Shaw  
Prothonotary  
PA \$10.00

Keener  
atty, Keener

KIM C. KESNER  
ATTORNEY AT LAW  
23 North Second Street  
CLEARFIELD, PA 16830  
(814) 765-1706

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

WALLACETON BOROUGH,  
Plaintiff

VS.

WALLACETON MUNICIPAL  
AUTHORITY,  
Defendant

\*  
\*  
\*  
\* No.: 00-1056-CD  
\*  
\* Type of Case: Civil  
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\*  
\* Type of Pleading: Petition  
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\* Filed on Behalf of: Plaintiff  
\*  
\*  
\* Counsel of Record for this Party:  
\*  
\* Kim C. Kesner, Esquire  
\* Supreme Court I.D. #28307  
\* 23 North Second Street  
\* Clearfield, PA 16830  
\* Phone: (814) 765-1706  
\* Fax: (814) 765-7006  
\*  
\*  
\* Other Counsel of Record:  
\*  
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FILED

OCT 09 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

WALLACETON BOROUGH, \*  
Plaintiff \*  
\*  
\*  
VS. \* No.: 00- -CD  
\*  
\*  
WALLACETON MUNICIPAL AUTHORITY, \*  
Defendant \*

**PETITION**

TO: The Honorable Judges of Said Court:

AND NOW, comes Wallaceton Borough by its Solicitor, Kim C. Kesner, Esquire and in support of this Petition avers as follows:

1. Petitioner is Wallaceton Borough of P.O. Box 121, Reed Street, Wallaceton, Clearfield County, Pennsylvania, 16876.
2. Respondent is Wallaceton Municipal Authority, a municipal authority organized and existing under the Pennsylvania Municipal Authorities Act 1945, as amended, ("ACT"), which was incorporated by Wallaceton Borough and which operates a water distribution system in and for the benefit of the Borough.
3. Section 8 of the Act, 53 P.S. §310 requires the following of every municipal authority:
  - a. Each authority must file an annual report of its fiscal affairs covering the preceding calendar year with the Department of Community and Economic Development ("DCED") and with the municipality creating it on forms created and distributed by DCED;

- b. Each authority must have its books, accounts, and records audited annually by a certified public accountant and a copy of its audit report must be filed with the Department in the same manner and within the same time frame as the aforesaid annual report;
- c. Each authority must publish a concise financial statement annually at least once in a newspaper of general circulation in the municipality where the principal office of the authority is located.

4. Section 8 of the Act, 53 P.S. §310, provides that if the required publication is not made by the authority, the municipality creating it shall publish the statement at the expense of the authority. If the authority fails to make an audit upon which the publication would be based, then the municipality is authorized and empowered to examine the accounts and books of the authority at the expense of the authority.

5. By correspondence from DCED, dated July 7, 2000, a copy of which is annexed as Exhibit "A", Petitioner was advised of Respondent's failure to file its 2000 report and CPA audit.

6. To the best of Petitioner's knowledge, information, and belief, no publication of Respondent's financial statement was made in 2000 as required by 53 P.S. §310.

7. Petitioner contacted DCED and was advised that Respondent has not filed an annual report and audit with DCED for any fiscal year after 1992 and that Respondent's annual report and audit for fiscal year 1992 was not filed until 1995.

8. Petitioner has made a number of past requests that Respondent comply with its duties under 53 P.S. §310. Respondent has either responded with promises that have not been fulfilled or has failed to respond.

9. By authority of 53 P.S. §310, Petitioner has requested access to Respondent's accounts and books so that Petitioner may complete the required audit(s) and make the required publication(s). To date Respondent has failed or refused to grant Petitioner access to its accounts, books, and other information sufficient for this purpose.

10. By letter dated February 7, 2000, a copy of which is annexed hereto as Exhibit "B", Petitioner's Solicitor communicated with Respondent requesting contact from Respondent's legal counsel. To date, neither Respondent nor its counsel have responded in any form or fashion.

WHEREFORE, Petitioner respectfully requests your Honorable Court to issue a Rule to Respondent to show cause why the following relief should not be granted:

- a. That this Court order Respondent to produce for Petitioner's inspection and copying Respondent's accounts and books, including its receipts, disbursements, contracts, sinking funds, investments, and any other matters relating to its finances, operations, and affairs;
- b. That this Court order Respondent to advance funds for or post sufficient security covering Petitioner's expense of conducting an audit for Respondent's fiscal year of 1999 and if necessary and appropriate, all other previous fiscal years where no audit was performed;
- c. That this Court order that Respondent comply with its legal duties under 53 P.S. §310 hereafter and;
- d. That this Court order such other relief as it deems to be just and proper.

Respectfully submitted,



\_\_\_\_\_  
Kim C. Kessner, Esquire  
Solicitor for Plaintiff



COMMONWEALTH OF PENNSYLVANIA  
CENTER FOR LOCAL GOVERNMENT SERVICES  
HARRISBURG  
17120-0025

July 7, 2000

WENDY JOHNS, SECRETARY  
WALLACETON MUNICIPAL AUTHORITY  
C/O BOROUGH OF WALLACETON  
P.O. BOX 16  
WALLACETON, PA 16876

Section 8 of the Municipalities Authorities Act, 53 P.S. 310 requires every authority to file its Annual Report of Municipal Authorities (DCED-CLGS-04) and a copy of its CPA audit with this department within 90 days after the end of the authority's fiscal year.

~~X~~ ~ Our records indicate that your authority has failed to file its 2000 Report and the CPA audit with us. It is now delinquent since the authority's fiscal year ends in March.

We are supplying duplicate copies of the report forms originally sent to you. Your cooperation by promptly completing and returning this form and a copy of your CPA audit is greatly appreciated. If you have any further questions you may call the Center For Local Government Services at (717) 787-8169.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Spielbauer".

Joseph P. Spielbauer  
Local Government Policy Manager

**KIM C. KESNER**

23 NORTH SECOND STREET, CLEARFIELD, PA 16830

**ATTORNEY AT LAW**

(814) 765-1706  
FAX (814) 765-7006

February 7, 2000

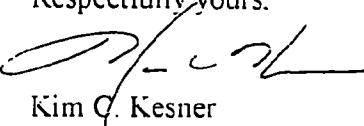
Barbara Dixon, Chairperson  
Wallacetton Municipal Authority  
% Gina English, Secretary  
P.O. Box 12  
Wallacetton, PA 16876

Dear Ms. Dixon:

I serve as Solicitor of Wallacetton Borough. I have consulted with Borough Council regarding the failure of the Wallacetton Municipal Authority to comply with §310 of the Pennsylvania Municipalities Authorities Act, 53 P. S. §310, requiring the Authority to, *inter alia*, file an annual report of its fiscal affairs with the Department of Community and Economic Development and the Borough and publish annually a financial statement in a newspaper of general circulation. I have preliminarily reviewed with the Borough its rights, responsibilities and remedies. It is my understanding that certain representations made by or on behalf of the Authority have not been fulfilled.

Please deliver a copy of this correspondence to the Authority's legal counsel. I hereby request that legal counsel to the Authority contact me within ten (10) days from the date of this letter. Failing such, I will communicate to the Borough specific recommendations for action.

Respectfully yours,



Kim C. Kesner

KCK/ldm

cc: Wendy Johns, Secretary – Wallacetton Borough

COMMONWEALTH OF PENNSYLVANIA:

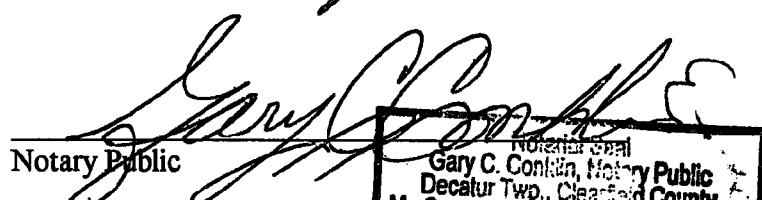
: S.S.

COUNTY OF CLEARFIELD

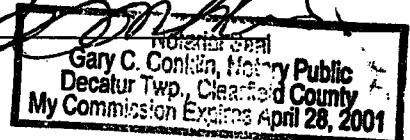
Before me, the undersigned authority, personally appeared, LARRY JOHNS, who being duly sworn according to law deposes and says that he is the President of the Wallacetown Borough Council, and that as such, he is authorized and empowered to execute this affidavit, and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Larry Johns, President  
Wallacetown Borough Council

Sworn to and subscribed before me this 29 day of Sept, 2000.

  
Notary Public

My Commission Expires:



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

WALLACETON BOROUGH

VS.

WALLACETON MUNICIPAL AUTHORITY

PETITION and RULE RETURNABLE

NO. 00-  
-CD

KIM C. KESNER  
ATTORNEY AT LAW  
23 North Second Street  
CLEARFIELD, PA 16830  
(814) 765-1706

*l. j. kesner*  
O'Hearn, Koenen  
Attorneys  
P.O. Box 1000  
\$80.00

*Accatty Koenen*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

WALLACETON BOROUGH,

Plaintiff

VS.

No: 00-

-CD

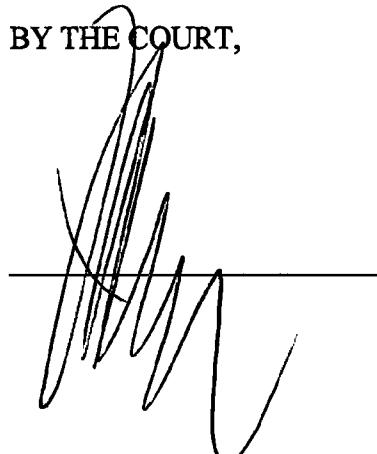
WALLACETON MUNICIPAL AUTHORITY, \*

Defendant \*

**RULE RETURNABLE**

AND NOW this 11<sup>th</sup> day of October, 2000, upon consideration of the foregoing Petition a Rule is hereby issued upon Wallaceton Municipal Authority to Show Cause why the prayers of the Petition should not be granted. Rule Returnable by written answer in accordance with Local Rule 206(h) on or before the 31<sup>st</sup> day of October, 2000. In addition, hearing shall be held on the Petition on the 21<sup>st</sup> day of Nov., 2000, at 10:30 o'clock A. M. in Courtroom # 1.

BY THE COURT,



WILLIAM A. SHAW  
Prothonotary

OCT 11 2000

William A. Shaw  
Prothonotary

OCT 11 2000  
013:34:15cc *11/11/00*  
Keweenaw  
Michigan

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

\*  
**WALLACETON BOROUGH,**  
Plaintiff

\*  
-vs-  
\*  
**WALLACETON MUNICIPAL AUTHORITY,**

Defendant

\*  
Docket No. 00-1256-CD

\*

Type of pleading:  
REPLY AND NEW MATTER OF  
WALLACETON MUNICIPAL  
AUTHORITY TO PETITION OF  
WALLACETON BOROUGH

Filed on behalf of:  
DEFENDANT, Wallaceton  
Municipal Authority

Counsel of record for  
this party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
Phone: (814) 765-9611  
Fax: (814) 765-9503

OCT 30 2000

WILLIAM C. W.  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

\*

WALLACETON BOROUGH,  
Plaintiff

\*

-vs-

\*

Docket No. 00-1256-CD

WALLACETON MUNICIPAL AUTHORITY, \*  
Defendant

\*

**NOTICE TO PETITIONER**

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE  
ENCLOSED REPLY AND NEW MATTER WITHIN TWENTY (20) DAYS FROM  
SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Dwight L. Koerber, Jr.  
Attorney for Respondent

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
Phone: (814) 765-9611  
Fax: (814) 765-9503

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WALLACETON BOROUGH,  
Plaintiff

-vs-

WALLACETON MUNICIPAL AUTHORITY, \*  
Defendant

\* Docket No. 00-1256-CD

\*

REPLY AND NEW MATTER OF WALLACETON MUNICIPAL AUTHORITY TO  
PETITION OF WALLACETON BOROUGH

COMES NOW, Wallacetton Municipal Authority, by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the following reply to the petition of Wallacetton Borough.

REPLY

1. Admitted.
2. Admitted, with the understanding that in addition to operating a water distribution system for and on behalf of the Borough of Wallacetton, Wallacetton Municipal Authority also operates a water distribution system for a portion of Boggs Township.
- 3-4. Admitted, with the understanding that respondent at one time did not fully recognize that a C.P.A. needed to be engaged to do the work, and had sought to have the audit done in a more informal basis. This will not occur in the future.

5. Admitted, with the understanding that from the time that that letter had come, respondent had already requested Jill Irwin, C.P.A., to audit its records and fully believed that the audit would be forthcoming in the near future.

6. It is admitted that an audit for fiscal year ending March 31, 2000 has not yet been performed, but respondent has requested Walter Hopkins & Company to prepare the audit and to assist it with future audits. John H. Musser, C.P.A., has projected that by December 8, 2000, that the audit should be completed.

7. Admitted in large part, but respondent does not know precisely what information was conveyed to petitioner. Respondent would point out that the difficulties that it has in having audits prepared go directly to the problems created by the secretary that it had formerly been using in order to handle its bookkeeping functions. A new secretary has been hired, who will work in conjunction with Walter Hopkins & Company, so as to make certain that the books and affairs are in order and to make certain that all required reports are filed.

8. Admitted in part and denied in part. It is admitted that certain requests were made from Borough Council, but it is denied that respondent has failed to keep its promises or has failed to properly respond. Respondent has not intended to establish any adversarial relationship with Borough Council and

wishes to work hand-in-hand with it in order to effectively serve the community. See response to paragraph 7 above, concerning difficulties incurred and corrective action being taken.

9. Admitted in part and denied in part. It is admitted that certain requests have been made, but respondent does not believe that it has denied Borough Council the opportunity to review its records. All of this, however, should be unnecessary, in view of the involvement of Walter Hopkins & Company. See answer to paragraph 7 above.

10. Admitted in part and denied in part. Respondent does not challenge the accuracy of the letter attached as Exhibit B, dated February 7, 2000. It would point out, however, that it was sent care of Gina English, who was secretary in place at the time that the delays and record-keeping problems occurred. This letter was never passed on to the president of Wallaceton Municipal Authority, Barbara Dixon, and as a result, an appropriate response was not possible.

#### **NEW MATTER**

In further support of its position herein, respondent offers the following New Matter:

11. As set forth in its Reply, respondent has shown that it has taken corrective action so as to make certain that the required annual report and audit is completed, with the audit

scheduled to be completed by December 8, 2000.

12. Respondent requests that the present hearing scheduled for November 21, 2000 in this matter be continued, so as to permit it to demonstrate that the audit has been completed.

13. If in fact the audit has been completed, and if in fact the services of Walter Hopkins & Company have been engaged so as to provide oversight of the financial affairs and to assist in preparing financial statements and performing audits in the future, it is respectfully submitted that there is no need for a hearing to be held, or for that matter, a Court Order to be entered in this matter.

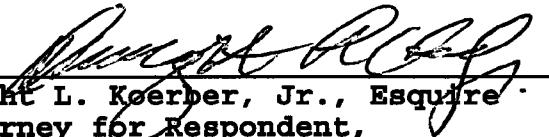
14. It is respondent's position that the matters involved herein will be rendered moot, and if that is the case, there would be no need to engage the legal system to insure that the financial and record-keeping affairs of respondent are administered properly.

15. Involved in this entire matter is the added expense that will be incurred by both petitioner and respondent if a court hearing is held and if an Order is eventually issued and if there is judicial oversight of the entire process, with these additional expenses being a financial burden that will eventually be passed on to the public. It is for this reason that respondent is requesting a continuation and eventual dismissal of this proceeding.

16. It is respondent's further belief that by engaging Dwight L. Koerber, Jr., Esquire, in this matter to make him available to communicate with Kim C. Kesner, Esquire, Solicitor for Wallacetton Borough Council, that there is an additional means for insuring that all proper and lawful requirements will be met.

WHEREFORE, respondent requests that a continuance be granted, and that in due course the petition be dismissed voluntarily, or that it be dismissed as being moot.

Respectfully submitted,

By:   
Dwight L. Koerber, Jr., Esquire  
Attorney for Respondent,  
WALLACETON MUNICIPAL AUTHORITY

**VERIFICATION**

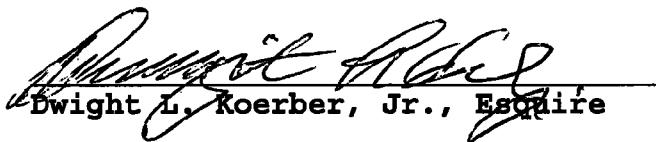
I verify that the statements made in this document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Barbara Dixon (President)  
Barbara Dixon, President  
Wallacetown Municipal Authority  
DATE: October 27, 2000

**CERTIFICATE OF SERVICE**

I certify that on this 30th day of October, 2000, a copy of the foregoing pleading was served by United States First Class Mail upon counsel for petitioner at the following name and address:

Kim C. Kesner, Esquire  
23 North Second Street  
Clearfield, PA 16830

  
Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
Docket No. 00-1256-CD

WALLACETON BOROUGH,  
Plaintiff

-vs-

WALLACETON MUNICIPAL AUTHORITY,  
Defendant

REPLY AND NEW MATTER OF  
WALLACETON MUNICIPAL AUTHORITY TO  
PETITION OF WALLACETON BOROUGH

Oct 25  
CJA45) 4cc a th  
R. Koerber

LAW OFFICE

DWIGHT KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

**Sheriff Docket # 10312**

**WALLACETON BOROUGH**

**00-1256-CD**

**VS.**

**WALLACETON MUNICIPAL AUTHORITY**

**PETITION & RULE RETURNABLE**

**SHERIFF RETURNS**

**NOW OCTOBER 19, 2000 AT 10:12 AM DST SERVED THE WITHIN PETITION & RULE RETURNABLE ON WALLACETON MUNICIPAL AUTHORITY, DEFENDANT AT RESIDENCE, R.D., WALLACETON, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BURTON KNEPP, P.I.C., MEMBER OF MUNICIPAL AUTHORITY A TRUE AND ATTESTED COPY OF THE ORIGINAL PETITION & RULE RETURNABLE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.**

**SERVED BY: DAVIS/MORGILLO**

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**Return Costs**

<b>Cost</b>	<b>Description</b>
<b>23.53</b>	<b>SHFF. HAWKINS PAID BY: ATTY.</b>
<b>10.00</b>	<b>SURCHARGE PAID BY: ATTY.</b>

OCT 30 2000  
01/11/44  
...  
Prothonotary

**Sworn to Before Me This**

30th Day Of October, 2000

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WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co., Clearfield, PA.

**So Answers,**

*Chester Hawkins*  
*by Marilyn Farns*  
Chester A. Hawkins  
Sheriff *CB*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WALLACETON BOROUGH,  
Plaintiff

-vs-

WALLACETON MUNICIPAL AUTHORITY, \*  
Defendant

\*

\*

Docket No. 00-1256-CD

\*

Type of pleading:  
CONSENT ORDER

Filed on behalf of:  
DEFENDANT, Wallacetton  
Municipal Authority

Counsel of record for  
this party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

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WILLIAM A. KERBER  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

WALLACETON BOROUGH,  
Plaintiff

-vs-

WALLACETON MUNICIPAL AUTHORITY, \*  
Defendant

\*

\*

Docket No. 00-1256-CD

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\*

CONSENT ORDER

AND NOW, this 20<sup>th</sup> day of November, 2000, upon agreement of the parties, IT IS THE ORDER AND DECREE of this Court that in view of the actions of Wallacetton Municipal Authority in retaining a Certified Public Accountant and in undertaking to comply with the provisions of 53 P.S. §310, the hearing scheduled in this matter for November 21, 2000, is continued. Either party may request that the hearing be rescheduled at any time, however, the hearing shall be rescheduled by the Court Administrator on or after February 1, 2001, if Wallacetton Borough has not filed a Praeclipe with the Prothonotary to mark its Petition ended and discontinued.

BY THE COURT:

John K. Reilly, Jr.,  
President Judge

CONSENT

We consent to the entry of this Order.

By: Kim C. Kesner  
Kim C. Kesner, Esquire  
Attorney for Plaintiff,  
WALLACETON BOROUGH  
DATE: 11/17/00

By: Dwight L. Koerber  
Dwight L. Koerber, Jr., Esq.,  
Attorney for Defendant,  
WALLACETON MUNICIPAL AUTHORITY  
DATE: 11/17/00

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO. 00-1256-CD

WALLACETON BOROUGH,  
Plaintiff

vs.

WALLACETON MUNICIPAL AUTHORITY,  
Defendant

CONSENT ORDER

**KIM C. KESSNER**  
ATTORNEY AT LAW  
23 North Second Street  
CLEARFIELD, PA 16830  
(814) 765-1706