

**CITY OF WHITEHALL EX REL. FENNESSY, CITY ATTORNEY, APPELLEE, v.
BAMBI MOTEL, INC. ET AL., APPELLANTS.**

[Cite as *Whitehall ex rel. Fennessy v. Bambi Motel, Inc.*, 1999-Ohio-395.]

Motions to quash subpoenas denied.

(No. 99-333—Submitted March 18, 1999—Decided March 19, 1999.)

APPEAL from the Court of Appeals for Franklin County, No. 98AP-384.

ON MOTIONS TO QUASH SUBPOENAS.

Charles D. Underwood, Whitehall City Attorney, *Charles W. McGowan*
and *Peter F.J. Beagle*, Assistant City Attorneys, for appellee.

E. Scott Shaw, Whitehall Special Counsel, for former Whitehall City
Attorney Dennis J. Fennessy.

Daniel J. Igoe; Whiteside & Whiteside and *Alba L. Whiteside*, for
appellants.

{¶ 1} This cause is pending before the court as a discretionary appeal and
claimed appeal of right. Upon consideration of the motions to quash by the city of
Whitehall and former Whitehall City Attorney Dennis J. Fennessy, it is ordered by
the court that the motions to quash subpoenas be, and hereby are, denied.

MOYER, C.J., DOUGLAS, F.E. SWEENEY, PFEIFER and COOK, JJ., concur.

RESNICK and LUNDBERG STRATTON, JJ., concur separately.

LUNDBERG STRATTON, J., concurring.

{¶ 2} Although I agree with the majority's ultimate disposition of the
plaintiff city of Whitehall's and former Whitehall City Attorney Dennis J.
Fennessy's respective motions to quash, I write separately because I believe that

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the court should *sua sponte* strike the motions to quash as improperly filed in this court, as opposed to denying the motions.

{¶ 3} Both Fennessy and the plaintiff moved to quash the subpoenas pursuant to Civ.R. 45(C)(3). Civ.R. 45(C)(3) states:

“On timely motion, *the court from which the subpoena was issued* shall quash or modify the subpoena * * * if the subpoena does any of the following * * *.” (Emphasis added.)

{¶ 4} The subpoenas in this case were issued by common pleas and municipal courts. Therefore, pursuant to the plain language of Civ.R. 45(C)(3), this court has no authority to quash the subpoenas because it did not issue them. Accordingly, I believe it is more proper to *sua sponte* strike the motions to quash as improperly filed in this court, as opposed to denying them.

RESNICK, J., concurs in the foregoing concurring opinion.
