

# THE WOLK LAW FIRM

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October 26, 2020

## Via Electronic Mail

Honorable Thomas P. Rogers  
Montgomery County Courthouse  
2 East Airy Street  
Norristown, PA 19404-0311

**Re: *Wolk v. The School District of Lower Merion*  
*Pa. Mont. Cty. CCP Civil Action No. 2016-01839***

Dear Judge Rogers:

An Order was just entered by Judge Garrett Page on this subject, a copy of which is attached. I am disturbed that for some odd reason the defendant has appealed to you instead of Judge Page on a matter he just addressed. Would you be good enough to refer this matter to him? If you intend to keep this matter to yourself, allow me to inform this Court what has occurred and why the District's letter is out of line.

I represent the people of Lower Merion and Narberth in this case of theft of taxes by The Lower Merion School District, which now totals over 100 million dollars, illegally collected, and then, since the surplus exceeded the 8% allowed by law, the District put that surplus into fictitious bank accounts "never intending to spend the money" and instead taxing for the same expense year after year. This was a finding, one of many, outlining the illegal taxing practices committed by the District, year after year, by the Auditor General of the Commonwealth of Pennsylvania, a copy of which report is attached for the Court's convenience, as Exhibit A.

This letter by counsel is another attempt to end run the decisions of the courts of this county by now attempting to bring into the equation the Pennsylvania Department of Education as some ultimate judge over what should be done in a case which the Department of Education, which knew about the theft, but did nothing. In fact, the only thing the Department of Education did was to write a letter to the District after the Auditor General's findings and tell the District to change its taxing practices a copy of which is attached as Exhibit B.

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What did the District do? Instead of filing for exceptions which the Auditor General found were fictitious year after year, the District now has doubled down and so grossly overestimated expenses and understated revenues, that it has accumulated in just three years some \$46 million in additional illegal surpluses! Not once did the District refund any of this money or credit the next year's taxes to the people, the funds obtained illegally as found by Judge Smyth and the Auditor General and as required by the Public School Act. The alleged procedural calamity that the Supreme Court mistakenly ascribed to the Courts of this County were entirely dispensed with by the Commonwealth Court's latest opinion a copy of which is attached as Exhibit C.

But what this Court should know is that the District NEVER argued once to Judge Smyth that he couldn't or shouldn't act on the injunction which was a separate Petition before the Preliminary Objections to the Complaint were determined. The Preliminary Objections were waived then, and are now. I cannot fathom that the District did not tell this Court that it waived the Preliminary Objections in its letter. Moreover, the Complaint to which the Preliminary Objections are pending does not request an injunction which was necessitated by Petition because of the District's threatened passage of yet another false budget. There could have been no Preliminary Objections to the Injunction because it was not filed, and when it was, there were neither Preliminary Objections nor a Motion to Dismiss or Strike filed by the District. They waived Preliminary Objections.

As to the need or even right of the Department of Education to be in this mix, the Commonwealth Court roundly dismissed that when it specifically held and recognized that the Department of Education provided no remedy for the conduct of the District:

Neither the Taxpayer Relief Act nor the School Code provide a remedy to challenge a school tax increase. The Administrative Agency Law and Local Agency Law are likewise unavailing. Where an agency's action "only affects the interest of the public in general, then the action will not be deemed an adjudication." *Ondek v. Allegheny County Council*, 860 A.2d 644, 648 (Pa. Cmwlth. 2004) (holding that a resolution issued by county council was a legislative enactment from which taxpayers have no right to appeal). 17 A tax set by a school district is not an "adjudication" because it does not impact discrete parties but the public at large. This is also the case for the Department's approval of an exception. Only an "adjudication" is reviewable under the Administrative Agency Law. 2 Pa. C.S. §702.

Similarly, the Taxpayer Relief Act does not create a mechanism for challenging the Department's approval or disapproval of a school district's

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application. The school district whose exception is denied has only one recourse: submit the proposed tax increase to the voters. Section 333(c) of the Taxpayer Relief Act, 53 P.S. §6926.333(c). The Taxpayer Relief Act is silent on a challenge to the Department's approval of an exception to the voter referendum. The Department's stated public position is that it will not conduct an administrative hearing on its approval of an exception.

Nevertheless, the School District argues that Taxpayers have remedies under the General Rules of Administrative Practice and Procedure (GRAPP). GRAPP permits that "[ a] person objecting to the approval of an application, petition, motion or other matter which is, or will be, under consideration by an agency may file a protest." 1 Pa. Code §35.23. GRAPP also provides that "[a] person complaining of anything done or omitted to be done by a person subject to the jurisdiction of an agency, in violation of a statute or regulation administered or issued by the agency may file a complaint with the agency." 1 Pa. Code §35.9. GRAPP is not a statutory remedy, and it is irrelevant to the School District's jurisdictional arguments.

GRAPP "governs the practice and procedure before agencies of the Commonwealth except as otherwise provided[.]" 1 Pa. Code §31.1(a). A "protest" filed under GRAPP does not require an agency to hold a hearing or to develop a factual record. Indeed, the "filing of a protest does not make the protestant a party to the proceeding," which "is intended solely to alert the agency and the parties to a proceeding of the fact and nature of the objection of the protestant to the proposed agency action." 1 Pa. Code §35.24. A protest has no effect beyond that achieved by a letter to an agency.

More importantly, GRAPP does not create substantive rights. It governs the procedures for conducting hearings that are created by statute. Neither the Taxpayer Relief Act nor the Administrative Agency Law create a hearing for challenging the School District's

ledgerdmain in yearly projecting multimillion-dollar deficits in documents required by law to be published to the voters and/or filed with the Commonwealth and not disclosing that contrary to projections the District every year experienced multimillion dollar surpluses[.]

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Trial Court op. at 14. GRAPP cannot be used to create substantive rights where none exist under the applicable statutes.

(March 2, 2020 Opinion at pp. 17-19).

So, there is no procedural disorder here except what the District's obstructive legal tactics visited upon Plaintiffs and itself. This letter is nothing but an attempt to end run the decisions on the merits by the Commonwealth Court and which the Supreme Court denied Allocatur, and the most recent Order of Judge Page. The appeals are done, the case is over and the nearly 10 million dollars that the District holds for the two years at issue in Judge Smyth's opinion needs to be distributed at once.

Judge Page made the correct decision. There is no procedure in Montgomery County Courts for this end run around Judge Page, or Judge Smyth, or the Commonwealth Court twice. and it's time for the people to get their money, remembering that this is only a tiny fraction of the illegal surplus obtained through false representations of the need for exceptions made to the Pennsylvania Department of Education.

Hopefully an investigating Grand Jury will shake loose the rest.

Most respectfully submitted,



ARTHUR ALAN WOLK

AAW/ap

Enclosures

cc: Hon. Garrett D. Page (via email)  
Kenneth A. Roos, Esq. (via email)  
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