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Attorney Lucas Joins Firm

R. Russell Lucas, Esq., has joined Maiello Brungo & Maiello, LLP, Attorneys at Law. Mr. Lucas is an associate in the school and municipal law practice group. He has represented school districts before federal district courts and state trial and appellate courts and provided counsel in the areas of personnel and labor, student matters, constitutional issues, policy and general school matters, as well as tax assessment matters. A graduate of Indiana University of Pennsylvania and the University of Pittsburgh School of Law, Mr. Lucas joined the Bar in 1996.

Watch for Your Client Survey

Administrators and Board Members of MB&M client districts will again be receiving a client survey in the mail. This is an important tool that our firm uses to help ensure that every administrator and school board member is getting the service he or she expects from their district's solicitor or special legal counsel.

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Volume VII, Fall 2005

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Student Residency –
The Latest Wrinkles

Assessment Appeals: Allegheny
County Threatens, But Court Affirms

SPECIAL INSERT:
Video Surveillance and
Employee Discipline

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ACT 72 PARTICIPANTS: WELCOME TO THE NEW BUSY SEASON

IF YOUR DISTRICT OPTED IN to Act 72, there are several related deadlines that significantly alter the calendar of school operations:

• **FRONT-END REFERENDUM**
If your school district chose a front-end referendum on earned income tax and net profits tax increase, the deadline for submitting the question to ballot was September 9, 2005.

• If voters approved the referendum to levy the additional tax, the district qualifies to receive gambling revenue.

• If the referendum failed, the district must itself impose 0.1% increases in the EIT and the net profits tax, to take effect on the first day of the fiscal year in which a district receives gambling revenue.

• **HOMESTEAD EXCLUSION**
There is a December 31 deadline to send a homestead exclusion notice to the owner of each residential parcel. The annual notice includes an application for exclusion, instructions for completion, and a statement of the deadline (March 1). This is in addition to the homestead exclusion notice sent in October 2004. A school district may limit its mailing to owners of those parcels not currently excluded or whose exclusion is expiring.

• **BUDGET-MAKING REQUIREMENTS**

Act 72 dramatically changes the way districts adopt budgets, partly by pushing deadlines well into the current fiscal year. Beginning with fiscal year 2006-07, districts must adopt preliminary budgets **90 days before the May primary**. This is to ensure that if

A NOTE TO DISTRICTS WHO OPTED OUT

At the start of the fall legislative session, the Governor proposed forcing all school districts into Act 72. He suggested eliminating the 0.1% earned income tax increase but retaining the mandate that districts submit any tax increases above the inflation rate to a public referendum – the “back-end referendum.”

This issue will be hotly contested in the next few months, and MB&M will continue to monitor it. If you have specific questions in the interim, please contact one of our school law attorneys or see www.mbm-law.net.

the proposed budget calls for a tax increase that exceeds the PDE's inflation index for that district, the budget can be voted on – the “back-end referendum.”

That preliminary budget must be available for public inspection for 20 days before its adoption. Thus, a school board actually must decide in **January** which budget it will put before the public.

By **September 30**, PDE must post the districts' individual inflation index numbers. From there, each district must timely adopt a preliminary budget that includes estimates of revenues, expenditures, and millage rates. If the preliminary budget contains a tax increase, the school district must file a report with PDE at least 85 days before the general election (that is, by **February 20** in 2006) to find out whether the proposed tax increase exceeds the index. PDE must respond within 10 days.

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Hot Education Topics



Act 72 Participants, continued...

If the proposed increase exceeds the PDE index, the district has three options:

1. Reduce the tax increase to fit the index.
2. Put a referendum on the ballot for the May primary seeking public approval of the proposed budget and tax increase.
3. Apply for an exception to the referendum requirements.

Act 72 allows numerous exceptions to the referendum. Generally the district must establish two things:

- Revenue raised by the tax increase permitted under the index is insufficient to balance the budget because of one or more qualifying expenditures.
- The district has experienced one or more qualifying expenditures.

The individual exceptions are submitted to either PDE or the local Court of Common Pleas, depending on the expenditure claimed.

By statute, school districts must receive notice whether the exception has been approved no later than 55 days before the primary election so that districts whose applications are unsuccessful can choose to seek budget approval through a referendum.

Nevertheless, if a district proposes a tax increase that is likely to exceed PDE's index, the district should seek an exception immediately to ensure there is sufficient time to pursue both an exception and a referendum, if necessary, or to make other budgetary decisions.

It is easy to see how the new Act 72 timelines will force school boards and administrators to adjust practices in significant ways. If MB&M can be of any assistance, please contact any of the attorneys in our school law group.

Student Residency – The Latest Wrinkles

Traditional concepts of student residency have been stretched to the limit with the expansion of public school options that include cyber charter schools. If a District desires to challenge a student's residency, it much successfully maneuver through the maze of School Code sections that address charter and cyber charter schools.

According to Section 1748-A...

One path is through Section 1748-A, which provides that residency challenge must be brought in the first seven days after receiv-

Today's Lesson:

School administrators must pay attention whenever the school receives an enrollment notification, as well as any notifications from the PDE regarding state allocation withholdings. The PDE and Commonwealth Court have proven to be sticklers for timing.

ing initial notice. First, within 15 days of enrollment, the parent/guardian and the charter school must notify the school district. The notification form contains only basic information and the signatures of the parent/guardian and charter school representative.

After receiving this notification, the school district only has seven (7) days to notify the charter school and PDE that the student is not a resident. Non-residence notification requires more specific information, forcing the school district to investigate immediately. Sources may include but are not limited to: voter registration or real estate tax records, and/or telephone listings. It also may be worthwhile to have a home visitor verify the parents' and student's residence.

To protect your district's ability to challenge residency, you must pay careful attention to all notices from either the charter school or the PDE. If a challenge is not raised within seven days of residency notice, it could be forever lost. Err on the side of caution and file the objection!

Then, the charter school, within seven (7) days, must notify the district whether or not it agrees. If a residency dispute still exists, the school district must appeal to the Department of Education for a final determination, subject to review by the Commonwealth Court.

But Then There's 1725-A...

A path less traveled is through School Code Section 1725-A, which appears to provide an additional remedy at the time a deduction is made from the district's state allocation to pay the charter school.

The Code provides that payment shall be made to the charter school in 12 equal monthly payments. However, if a school district does not make the payments, the PDE Secretary shall deduct the estimated amount, as documented by the charter school, from any and all state payments made to the district.

Within 30 days after the deduction, the school district may notify the Secretary that it is inaccurate. The Secretary shall give the district a hearing on the following issues:

(1) whether the charter school documented that its students were enrolled; (2) the period during which each student was enrolled; (3) the school district of residence; and (4) whether the amounts were accurate.

Although this would seem to be the next statutory opportunity to challenge residency of the student, there is currently no guidance on how this section will be applied.

Code Could Be Clarified

Through either regulations or a Basic Education Circular (BEC), the PDE could reconcile Sections 1725-A and 1748-A as to when residency objections can be filed and what residency means in a cyber charter school situation. Until this occurs, if your District has any doubts regarding residency, object early and often.

Assessment Appeals: Allegheny County Threatens, But Court Affirms

The chief executive of Allegheny County recently vowed to "make it much harder for school districts and municipalities to increase the values of newly purchased homes through the appeals process."¹

It's tough talk, but let us review the state of the law:

On occasion, a taxpayer or counsel has argued that appeal of a recently sold property constitutes an unlawful "spot assessment," reasoning that the district's process is non-uniform and punishes owners who have recently purchased. In response, school districts have argued that selecting properties by referring to recent sales is fully consistent with the statutory and case law. Moreover, a recent sale is the best available evidence of fair market value.

A recent Commonwealth Court case, *Veas v. Carbon County Board of Assessment Appeals*, (Pa. Cmwlth, 2005), held that a district's practice of appealing properties based on recent sales is lawful.

The plaintiffs purchased 85 acres of unimproved land for \$170,000. A countywide reassessment the year before assigned a value of \$92,250 to the property.

The school district's practice was to appeal assessments where purchase prices in recent sales exceeded assessed value by \$15,000. The district appealed the plaintiffs' assessment to the local board of assessment and argued that the fair market value should equal the purchase price. The board increased the fair market value to \$161,900. The plaintiffs appealed to the local Court of Common Pleas, arguing that the district's appeal was excessive and that the value increase was discriminatory and violated due process and equal protection.

Before the Court, the school district presented an appraisal and testimony indicating that the property

was worth \$180,000. The taxpayers testified on their own behalf and confirmed the purchase price of \$170,000 without presenting any competing appraisal. The trial court affirmed the board of assessment's determination.

The taxpayers then appealed to the Commonwealth Court, continuing to argue that the appeal violated the Uniformity Clause (Pennsylvania Constitution) and the Equal Protection Clause (U.S. Constitution). The Commonwealth Court noted that the taxpayers did not challenge the constitutionality of the statute that empowers school districts to file assessment appeals. Nor did they present comparable properties appealed or not appealed by the district. Thus, they relied on a very narrow argument that the district's decision to appeal their property as a result of the recent sale was unconstitutional.

The Commonwealth Court rejected their argument and held that the district's decision was proper under Pennsylvania statute that grants municipal governing bodies, including school districts, authority to appeal the taxable value of properties. The Court held that the "spot assessment" argument did not apply because a school district cannot assess. It can only appeal – and that power is granted equally to individual landowners and government entities.

The Commonwealth Court noted that, in order to prevail in their argument, the taxpayers must show deliberate discrimination in the application of the tax. The Court found that the district's practice was not discriminatory and that no discrimination occurred in this particular appeal.

Rather, the Court held that "school districts that feel aggrieved by any property assessment have the right to appeal, in the same manner, subject to the same procedure and effect, as if the appeal were pursued by an individual property owner" and that if some property values are increased, it does not violate uniformity.

The plaintiffs again appealed, but in the meantime, the Commonwealth Court restated and followed its holding. In *Appeal of Springfield School District*, (Pa. Cmwlth, 2005) the taxpayer argued that the school district's method of choosing properties to appeal was discriminatory and violated uniformity. Relying on *Veas*, the Court held that the issue was resolved, and reiterated that "[t]he law places no restrictions on the 'methodology' employed by a school district or by an individual property owner in determining whether to appeal."

Thus, the Commonwealth Court has answered the question in favor of school districts that wish to appeal assessments based on recent sales. If you have questions about applying these recent decisions to your circumstance, please contact one of our school law attorneys.

¹ "Assessment appeals by schools, municipalities targeted in new system," *Pittsburgh Post-Gazette*, September 27, 2005.