

ARTHUR ALAN WOLK, PHILIP BROWNDIES	:	MONTGOMERY COUNTY
and CATHERINE MARCHAND,	:	COURT OF COMMON PLEAS
	:	
Plaintiffs for Themselves and All School	:	
Taxpayers to The School District of Lower	:	NO. 2016-01839
Merion,	:	
v.	:	
	:	JURY TRIAL DEMANDED
THE SCHOOL DISTRICT OF LOWER MERION,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2016, upon consideration of Plaintiffs' Petition for Injunctive Relief and the testimony and exhibits entered into evidence during the hearing held June 14, 2016, it is hereby ORDERED AND DECREED:

1. The tax increase of 4.44% enacted by the Lower Merion School District is declared illegal, invalid, unwarranted and unjustified.

2. The Lower Merion School District is within the next 10 days ordered to give public notice of a revised budget for 2016-17, and within 30 days thereafter adopt the revised budget for 2016-17 without a tax increase, and forthwith to deliver the same to the Tax Collector requesting that he send amended tax bills to the taxpayers of Lower Merion and Narberth which reflect no tax increase for the 2016-17 fiscal year.

3. The Lower Merion School District is ordered henceforth to strictly comply with the budgeting requirements of the Taxpayer Relief Act and to cease and desist from making false and

misleading claims to the Pennsylvania Department of Education for increased Special Education and PSER expenses, which it knows or has reason to know will be adequately paid for with existing revenues.

4. The Lower Merion School District is ordered to strictly comply with the Taxpayer Relief Act by affording the taxpayers in the District a referendum on any tax increase above the State calculated index, unless there is abundant assurance supported by strict adherence to accounting principles of unfunded increases in Special Education and PSER expenses that cannot be funded by unassigned fund surpluses or budget surpluses.

5. The Lower Merion School District is ordered to direct its Business Manager to carefully review his budgeting processes and procedures so that surpluses are more accurately forecast and such information is provided to the taxpayers before adopting any budget that includes a tax increase

6. The Lower Merion School District is directed to carefully review surplus fund assignments and fund transfers to determine which have been made to hide surpluses in excess of 8% limit under Act 1 and to return those sums to the unassigned funds balance.

BY THE COURT

The Honorable Richard Smyth, Judge

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**PLAINTIFFS' FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF THEIR PETITION FOR INJUNCTIVE RELIEF**

FINDINGS OF FACT

1. On June 13, 2016, one day before the Court's hearing, the Lower Merion School District (the "District") passed a budget for 2016-17, which budget included a 4.44% tax increase. (Defendant's Hearing Ex. SD-1).
2. In connection with that process, the District published a Preliminary Budget. (Plaintiffs' Hearing Ex. 22).
3. Shortly before the final passage of the budget, the District refinanced approximately \$55 Million in existing bonds, which transaction is reflected in the Bond Offering document. (Plaintiffs' Hearing Ex. 33).

4. Both the Preliminary and Final Budget anticipated debt service of \$28.2 Million. (Plaintiffs' Hearing Ex. 22; Defendant's Hearing Ex. SD-1 (b)).

5. The final Bond Offering document represented that the costs for debt service for 2016-17 would be \$25,463,124, or \$2.8 Million less than was claimed as debt service expense by the District in its 2016-17 budget documents. (Plaintiffs' Hearing Exs. 33, 22).

6. The District's Business Manager, Victor Orlando, testified under oath that the debt service expense for 2016 will be \$2.8 Million less than the amount claimed as debt service expense in the adopted budget for 2016-17. (N.T. 6/14/16 Hearing at p. 167).

7. Mr. Orlando also testified that the District will save another \$1.6 to \$1.8 Million in 2016-17 from the refinancing of the bonds. (N.T. 6/14/16 Hearing at p. 173).

8. The total saved by the District in debt service from the amount claimed in the budget is at least \$4.4 to \$4.6 Million by adding the actual debt service and the actual savings from the refinance which for reasons stated below were not already accounted for in the 2016-17 budget. (N.T. 6/14/16 Hearing at pp. 167, 173).

9. At the time the District passed its 2016-17 budget, one day before the hearing on this injunction, it knew or had reason to know that it had overstated debt service by at least \$4.4 to \$4.6 Million. (N.T. 6/14/16 Hearing at pp. 173-174).

10. The District Business Manager testified under oath that the savings the District would realize by debt refinancing in 2016, totaling \$1.6 to \$1.8 Million, was already reflected in the debt service stated in the final Bond Offering document. (Plaintiffs' Hearing Ex. 33; N.T. 6/14/16 Hearing at pp. 174-175).

11. On Page 21 of the Bond Offering document it states that the debt service for 2016-17 is \$25,463,124. (Plaintiffs' Hearing Ex. 33).

12. The last audited financial statement for which there is information on debt service shows that actual debt service for the year ending June 30, 2015, one year before bond refinancing, was \$25,642,487, or virtually the same as the debt service stated in the final Bond Offering document. (Plaintiffs' Hearing Exs. 13e, 33).

13. Contrary to Mr. Orlando's sworn testimony at the hearing, the \$1.6 to \$1.8 Million savings to be realized by the District as a result of the bond refinancing was not reflected in the 2016-17 budget. (N.T. 6/14/2016 Hearing at pp.174-175).

14. Therefore, the difference between debt service claimed by the District in the 2016-17 budget of \$28.2 Million and the actual debt service to be incurred is at least \$4.4 to \$4.6 Million. (N.T. 6/14/16 Hearing at pp. 172-174).

15. The Budget Book issued by the District for 2016-17 shows debt service for 2015 was \$23,765,470. (Plaintiffs' Hearing Ex. 17 at p. 53).

16. That same Budget Book, not the Preliminary or Final Approved Budget, states that debt service for 2016-17 shall be \$24,440,582. (Plaintiffs' Hearing Ex. 17 at p. 53).

17. Debt service is not an estimate like other costs in the budget; rather, it is a calculated number based on the amount of the bonds, and the interest and principal payable. (Plaintiffs' Hearing Ex. 33).

18. The District has overstated debt service in its 2016-17 budget by at least \$4.4 Million, and perhaps by as much as \$5,359,418, the difference between the debt service stated on page 53 of the Budget Book for 2016-17 and the District's 2016-17 budget and the \$1.6 to 1.8 Million in claimed, but unreported, savings due to the 2016 bond refinance. (N.T. 6/14/16 Hearing at pp. 89-90, 166; Plaintiffs' Hearing Exs. 3, 33).

19. The District has overstated debt service requirements vs. actual expenses for debt service each and every year, for which the Court has audited financial statements. (Plaintiffs' Hearing Exs. 13-13e).

20. In 2010, debt service was overstated by \$539,744. (Plaintiffs' Hearing Ex. 13).

21. In 2011, debt service was overstated by \$769,193. (Plaintiffs' Hearing Ex. 13a).

22. In 2012, debt service was overstated by \$6,778,291. (Plaintiffs' Hearing Ex. 13b).

23. In 2013, debt service was overstated by \$ 435,645. (Plaintiffs' Hearing Ex. 13c).

24. In 2014, debt service was overstated by \$1,473,786. (Plaintiffs' Hearing Ex. 13d).

25. In 2015, debt service was overstated by \$2,071,617. (Plaintiffs' Hearing Ex. 13e).

26. The total of debt service overstatements by the District in 6 years is \$12,068,227. (Plaintiffs' Hearing Exs. 13-13e).

27. If the overstated debt service for 2016-17 of \$5,259,418 is included, the total of debt service overstated by the District, not including 2015-16 for which we do not have an audited statement, is \$17,327,645. (Plaintiffs' Hearing Exs. 13-13e).

28. Due to a claimed deficit in each of the tax years for which there is information, the District claimed and obtained a tax increase from the taxpayers. (N.T. 6/14/16 Hearing at pp. 33-34).

29. The total tax increases for the last 11 years by the Lower Merion School District are \$53.3%. (Plaintiffs' Hearing Ex. 22 at p. 6).

30. In each and every year for which the Court has audited financial statements for the District, there has been a surplus, instead of a deficit. (Plaintiffs' Hearing Ex. 13; N.T. 6/14/16 Hearing at p. 43).

31. In 2010, the predicted deficit was \$4,790,357, but the surplus was, in fact, \$9,520,959. (Plaintiffs' Hearing Ex. 13).

32. In 2011, the predicted deficit was \$5,632,954, but the surplus was, in fact, \$2,157,693. (Plaintiffs' Hearing Ex. 13a).

33. In 2012, the predicted deficit was \$5,101,371 but the surplus was, in fact, \$15,537,492. (Plaintiffs' Hearing Ex. 13b).

34. In 2013, the predicted deficit was \$8,820,402, but the surplus was, in fact, \$5,168,620. (Plaintiffs' Hearing Ex. 13c).

35. In 2014, the predicted deficit was \$7,522,634, but the surplus was, in fact, \$6,105,931. (Plaintiffs' Hearing Ex. 13d).

36. In 2015, the predicted deficit was 7,517,643, but the surplus was, in fact, \$4,117,736. (Plaintiffs' Hearing Ex. 13e).

37. Mr. Orlando testified that even though about a month before the hearing he saw the actual budget numbers for the year ending June 30 2016, he could not remember whether or how much the surplus would be for the year ending just 2 weeks from the date of the hearing, but there was a surplus not a deficit as he projected for that budget year. (N.T. 6/14/16 Hearing at pp 149, 223).

38. The total surpluses for the years 2010-2015 for which the Court has audited financial statements are \$42,608,431. (N.T. 6/14/16 Hearing at p. 46; Plaintiffs' Hearing Exs. 13-13e).

39. School Fund Balances are unassigned funds, in the case of Lower Merion School District cash which must not exceed 8% of the total budgeted expenditures. (N.T. 6/14/16 Hearing at pp. 67, 71, 74, 142, 143; Plaintiffs' Exs. 16, 20).

40. In 2015, before the close of the fiscal year, Mr. Orlando was authorized to transfer from the unassigned Fund Balance such amounts as the auditors told him he needed to transfer from the unassigned Fund Balance to the Capital Reserve Account, but he admitted the auditors do not have that function. (N.T. 6/14/16 Hearing at p. 141).

41. Mr. Orlando acknowledged that auditors have no authority to direct the Business Manager to make transfers of unassigned fund balances. (N.T. 6/14/16 Hearing at p. 145).

42. Funds that are authorized to be transferred must be transferred in the fiscal year they are authorized. (N.T. 6/14/16 Hearing at pp. 147-148).

43. Contrary to the law, Mr. Orlando transferred more than \$3 Million from the unassigned surplus Fund Balance to the Capital Account in November 2015, following the close of the fiscal year June 30, 2015. (N.T. 6/14/16 Hearing at p. 145).

44. This transfer, which appears to be an effort by the District to comply with the 8% requirement, was not in accordance with Sections 609 or 687 of the Public School Act of 1949. (N.T. 6/14/16 Hearing at pp. 108, 110).

45. The \$3 Million transfer was not the first time that excess surpluses were transferred from unassigned accounts, where they properly belonged, to other accounts to avoid the 8% limit of unassigned funds from budget surpluses. (N.T. 6/14/16 Hearing at pp. 68, 70, 71, 74, 107-110; Plaintiffs' Hearing Exs. 13, 16).

46. The effect of such transfers is to make the unassigned surpluses appear to be within Act 48 statutory limits when, in fact, they were not. (N.T. 6/14/16 Hearing at pp. 46, 107; Plaintiffs' Hearing Exs. 11 [Slide 29], 12, 16).

47. The effect of transferring surpluses from budgets that were supposed to generate deficits is to remove the surpluses, in the millions of dollars, from consideration of the need for a tax increase the next fiscal year. (N.T. 6/14/16 Hearing at pp. 45-46, 49, 53, 56-57).

48. Another effect of such transfers of budget surpluses that were predicted to be deficits is to hide from the taxpayers the extent by which the budgets were inaccurate. (N.T. 6/14/16 Hearing at p. 56).

49. A review of the history of the District's representations that the unassigned surpluses were within the 8% limit shows that from 2010 through 2014-15, the ending unassigned fund balances were in excess of the limit, and not under the limit as represented by the District to the taxpayers of Lower Merion and the Pennsylvania Department of Education. (Plaintiffs' Hearing Ex. 11 at p. 29).

50. In each and every year for which Mr. Orlando prepared budgets for the District claiming an anticipated deficit, and thus requiring a tax increase, there has, in fact, been a surplus. (N.T. 6/14/16 Hearing at pp. 125, 214, 216-218).

51. Mr. Orlando testified that the 2016-17 budget was prepared using the same accounting principles as the earlier budgets. (N.T. 6/14/16 Hearing at p. 152).

52. There is reason to believe that there won't be a significant surplus for the 2015-16 fiscal year and a significant surplus for the 2016-17 budget, given that the Court has identified at least a nearly \$5.4 Million overstatement of debt service for 2016-17 against a claimed projected deficit of \$8,820,350, or 61% of the projected deficit. (N.T. 6/14/16 Hearing at pp. 82, 173, 175).

53. The Court finds that at the very least 61% of the 4.44% tax increase for 2016-17 is unsupported by the actual debt service cost for which the District represented in its 2016-17 budget.

54. The Court finds that the \$3 Million improperly transferred to the capital surplus account in November 2015 should be returned to the unassigned fund balance.

55. The Court finds that the repeated transfers by the District from the unassigned funds balance to other “assigned” accounts was to make it appear that the surpluses from inaccurate budget projections were actually for assigned expenses, when they were not and thus should be returned to the unassigned funds balance account.

56. Mr. Orlando testified that the accounting principles, by which he is bound, caution business managers not to use Fund Balances for on-going programs. (Plaintiffs’ Hearing Ex. 21; N.T. 6/14/16 Hearing at pp.152, 154).

57. Mr. Orlando testified that budgets are to be evaluated after the close of the year to determine the accuracy of projections for expenses and income so they can be used to determine whether projections were accurate and whether the projections need to be altered for the next year’s budget. (Plaintiffs’ Hearing Ex. 21 at p. 2; N.T. 6/14/16 Hearing at pp. 155-156).

58. Mr. Orlando acknowledged that these controls and accountability are fundamentally important because the District uses public funds and that action taken in obtaining and sending these funds is part of the public trust given by citizens to their elected officials. (Plaintiff’ Hearing Ex. 7, N.T. 6/14/16 Hearing at pp. 135, 157-158).

59. Mr. Orlando testified that his obligation and the LMSD’s obligation to the public trust is that it will be accurate in its budgeting process. (N.T. 6/14/16 Hearing at p. 183.)

60. The Court finds that for each year it has audited financial statements, the District has had budget surpluses that exceed the 8% limit and it has failed to effectively utilize, if actually utilized at all, the required accounting principles to balance the budget. (N.T. 6/14/16 Hearing at pp. 74, 110).

61. Mr. Orlando testified that each year there is a budget surplus, the surplus is unassigned, which means that it is part of the unassigned fund balance. (N.T. 6/14/2016 Hearing p. 217).

62. Mr. Knauss pointed out that these unassigned surpluses totaled over \$40 Million before they were transferred by the LMSD to assigned funds to avoid the 8% surplus limit. (N.T. 6/14/2016 Hearing p. 74).

63. It would appear that past tax increases were excessive given the amount and frequency of surpluses realized. (N.T. 6/14/16 Hearing at pp. 135-153).

64. The Lower Merion School District has accumulated, even in the face of repeated claims of budget deficits, cash deposits in the bank of between \$50 Million and \$60 Million, according to Mr. Orlando. (N.T. 6/16/2016 Hearing p. 139).

65. Mr. Orlando testified that even in the face of repeated multi-million surpluses the District did nothing to reduce the tax increases proposed in the next year's budget, in spite of an obligation to do so by Government issued accounting guidelines, by which Mr. Orlando admitted he was bound to use. (N.T. 6/14/2016 Hearing at pp. 152, 155).

66. It would appear that if only the \$3 Million improperly transferred in November 2015 were applied to the 2016-17 budget, claimed deficit together with the actual debt service costs, rather than the overestimated debt service costs, there would be no need for any tax increase for fiscal 2016-17. (N.T. 6/14/16 Hearing at pp. 68, 70, 71, 74, 107-110, 145, 173; Plaintiffs' Hearing Exs. 13, 13e, 16, 22, 33).

67. It appears that the surpluses realized by inaccurate budgeting, while denominated unassigned surpluses are, in fact, simply surpluses that the District knew or should have known

would be realized by its overstatement of expenses and understatement of revenues, and could have been used to reduce or eliminate tax increases. (N.T. 6/14/16 Hearing at pp. 140).

68. The Court finds that the claimed use of unassigned surpluses to balance the budgets is not that at all, but instead just an attempt by the District to make it appear it was using unassigned balances to reduce the tax increase burden, when it was not.

69. For example, in the 2016-17 budget the District claims it will use some \$9,335,540 of unassigned surpluses, in addition to the 4.44% tax increase, to ease the burden on taxpayers. (Plaintiffs' Hearing Exs. 12, 22).

70. The Court finds there is likely no deficit for 2016-17 at all and, therefore, no use of the fund balance for recurring expenditures need occur.

71. The Taxpayer Relief Act, also known as Act 1, was intended to provide tax relief for taxpayers from unwarranted school district tax increases. (N.T. 6/14/16 Hearing at p. 135).

72. That Act allows an index to be prepared by the Pennsylvania Department of Public Education, which permits a district to increase taxes, provided its budget requires it, up to 2.4% without obtaining Department or taxpayer approval. (N.T. 6/14/16 Hearing at pp. 105, 199).

73. If the tax increase beyond the index is required to meet pension obligations and/or Special Education costs requirements, then the local district may increase taxes to the extent of the increased costs beyond the index without a taxpayer referendum provided it needs the funds. (Plaintiffs' Hearing Ex. 22).

74. Since 2008, the District has sent to the Pennsylvania Department of Education referendum exceptions, which were approved based upon its representations of need by the District. (N.T. 6/14/16 Hearing at pp. 22-23; Plaintiffs' Hearing Exs. 23-32).

75. Neither the proposed budgets nor the actual surpluses in prior years accompany the requests to the Commonwealth for exemptions, which are made at the beginning of the budget process. (N.T. 6/14/16 Hearing at pp. 131-132).

76. Thus, from the Commonwealth's point of view, assuming the budgetary requirements are met, the budget increases beyond the index are legal without a referendum, provided the information afforded to the State is accurate and the budget which supports the tax increase is otherwise accurate and there is a financial need by the District. (N.T. 6/14/16 Hearing at p. 106). Any other interpretation would render the Taxpayer Relief Act meaningless.

77. A review of the audited statements from 2010 to 2015 reveals that in each and every year the actual expenditures for Special Education were substantially less than that represented to the Pennsylvania Department of Education by the District. (Plaintiffs' Hearing Exs. 13-13e).

78. For example, in 2010 the Special Education requirements were represented to be \$27,949,582.29 when, in fact, they were \$ 26,757,293, or a surplus of \$2,175,133 according to the audited statement. (Plaintiffs' Hearing Ex. 13).

79. For example, in 2011 the Special Education requirements were represented to be \$29,160,418 when, in fact, they were \$28,579,420, or a surplus of \$580,998. (Plaintiffs' Hearing Ex. 13a).

80. For example, in 2012 the Special Education requirements were represented to be \$32,825,748 when, in fact, they were \$31,380,817, or a surplus of \$1,444,931. (Plaintiffs' Hearing Ex. 13b).

81. For example, in 2013 the Special Education requirements were represented to be \$34,543,805 when, in fact, they were \$33,316,363, or a surplus of \$1,227,442. (Plaintiffs' Hearing Ex.13c).

82. For example, in 2014 the Special Education requirements were represented to be \$37,609,656 when, in fact, they were \$35,495,209, or a surplus of \$2,114,447. (Plaintiffs' Hearing Ex.13d).

83. For example, in 2015 the Special Education requirements were represented to be \$39,078,209 when, in fact, they were \$38,848,551, or a surplus of \$229,658. (Plaintiffs' Hearing Ex. 13e).

84. The total surpluses for the five years for which audited statements are in evidence are \$7,772,609. (Plaintiffs' Hearing Exs. 13-13e).

85. These surpluses would have not permitted tax increases in excess of the index without a referendum of the voters/taxpayers, who were deprived of that right by excessive errors in calculating Special Education increases, which did not materialize in any year examined. (N.T. 6/14/16 Hearing at p. 215).

86. Mr. Orlando, as previously stated, does not provide the State Board of Education, when making application for exemptions, the actual budget numbers from the year prior or the projected budget numbers for the year for which the exemption is requested to demonstrate a financial need. (N.T. 6/14/2016 Hearing at p. 132).

87. Mr. Orlando testified that there exists a pension assigned surplus fund of some \$15 Million (it actually was over \$20 Million, but some \$5 Million was removed from it without explanation). (N.T. 6/14/16 Hearing at pp. 226-227).

88. Mr. Orlando testified that since increases in pension obligations (PSERS) are funded annually as part of the budget, there is no need to use that fund for pension obligations. (N.T. 6/14/16 Hearing at pp. 226-227).

89. It appears that the District is using the PSERS fund and the Capital fund as a place to transfer surpluses from the budgets so as not to show the unassigned fund balances to be well in excess of the 8% and to justify tax increases in excess of the index, while depriving taxpayers the referendum the Taxpayer Relief Act was designed to afford. (N.T. 6/14/16 Hearing at pp. 220-226, 227).

90. Given the Court's findings above, it is clear that the District's mailing to Residents of Lower Merion and Narberth of May 2016 is false with respect to statements made about the 2016-2017 budget. (Plaintiffs' Hearing Ex. 15).

91. The District attempted to justify its 4.44% tax increase by comparing it with other neighboring district proposed tax increases. (Plaintiffs' Hearing Ex. 15).

92. In fact, the tax increases proposed by neighboring districts was far less than that reported, and the taxpayers were not advised of the downward revisions. (N.T. 6/14/16 Hearing at p. 177).

93. The District also claimed that the 2016-2017 tax increase was due to increased Special Education costs, increased pension obligations and increased enrollment, yet conceded the District would realize a \$9.8 Million savings from the bond refinancing, and, and shown, these expenses have been systematically overstated. (Plaintiffs' Hearing Ex. 15; N.T. 6/14/16 Hearing at pp. 172-173, 194-201).

94. In fact, the enrollment projections that appear in the final Bond Refinancing document show a slightly increasing enrollment, but decreasing enrollment after 2020. (Plaintiffs' Hearing Ex. 33).

95. The District's communication to residents is misleading and does not accurately state the need for a tax increase. (Plaintiffs' Hearing Ex. 15, N.T. 6/14/16 Hearing at pp. 172-, 183).

96. The Court finds that the understatement of revenues and overstatement of expenses is systemic, repeated and unjustified, and has resulted in unwarranted State approvals of District tax increases in excess of the index since 2008. (Plaintiffs' Hearing Ex. 11, Slide 18).

97. The Court finds that the Lower Merion School District has breached the public trust by systematically and repeatedly failing to provide accurate budgets to support virtually uninterrupted tax increases totaling 53% when in virtually each year surpluses in the millions of dollars have been realized. (Plaintiffs' Hearing Exhibit 11).

98. The Court further finds that by overstating expenses and understating revenues the District has repeatedly misrepresented the need for tax increases, and for 2016-17 has not demonstrated a need for any tax increase at all. (N.T. 6/14/16 Hearing at p. 220).

CONCLUSIONS OF LAW

1. In *Arthur v. School District of Pike Borough*, 30 A. 299 (1894), the Supreme Court of Pennsylvania held that an injunction will lie to reign in abuses by a school district in levying unlawful taxes.

2. In 1969, the Pennsylvania Supreme Court held that an injunction was appropriate to restrain a taxing authority from levying illegal taxes, which included interim taxes for the School District of Philadelphia. *Mastrangelo v. Buckley, et. al.*, 250 A.2d 447 (1969).

It is vital for the good administration of municipal affairs for its officials to budget expenditures for the necessary functions and thereby determine the amount of tax necessary for the operation of the municipality for the ensuing year. It was for the purpose of protecting the public against extravagance and waste in local government that the budget provisions were made more stringent over the years by statutes and court decisions. *Id.*

3. A court of equity has jurisdiction and, in furtherance of justice, will afford relief if the statutory or legal remedy is inadequate, or if equitable relief is necessary to prevent irreparable harm. *Martino v. Transport Worker's Union of Philadelphia, Local 234*, 505 Pa. 391, 396 (1984).

4. In *Gregg v. Sandford*, 65 F. 151, 156 (1898), the Third Circuit Court of Appeals held: "Preventive relief by injunction against an illegal tax which would cast a cloud upon the title to real estate is within the settled powers of a court of equity; and where a tax on its face appears to be valid, and evidence *aliunde* necessary to show its invalidity, equity will interfere.... The books are replete with cases in which equity has interposed to prevent or cancel a cloud upon title to land arising from illegal tax assessments or sales thereunder, or from tax deeds, where the proceeding sought to be enjoined or set aside was *prima facie* valid, and it was necessary to prove extrinsic facts to show its illegality." *Id.* at 156.

5. In *Shelton v. Platt*, the U.S. Supreme Court said that "In cases of fraud, accident or mistake, cases of cloud upon one's property and cases where one is threatened with irremediable mischief, may demand other remedies than those the common law can give, and there, in proper cases, may be afforded in the courts of equity." *Id.* at 592.

6. Likewise, in 1969 the Pennsylvania Supreme Court held that an injunction was appropriate to restrain a taxing authority from levying illegal taxes, which included interim taxes for the School District of Philadelphia. *Mastrangelo v. Buckley, et. al.*, 250 A.2d 447 (1969). In addressing the very issue in the case at Bar, the Supreme Court was unmistakable in reiterating the legal budgeting standard. "The budget required is more than a mere estimate of probable revenue and expenditures. It is a method whereby expenditures are controlled and limited during the fiscal period by designating the amount of money legally at the disposal of the supervisors and the purpose for which it may be expended. *Kistler v. Carbon County*, 35 A.2d 733 (Pa. Super 1943).

These budget provisions are not directory but ‘in the highest degree mandatory.’ *Leary v. City of Philadelphia*, 172 A. 459, 465 (1934).”

7. “These budget provisions are not directory but ‘in the highest degree mandatory.’ *Leary v. City of Philadelphia*, 172 A. 459, 465 (1934).”

8. A Class Action is the appropriate legal method to contain the imposition of an unlawful tax as described in the Commonwealth Court case of *Dunn v. Allegheny County Property Appeals and Review*, 794 A.2d 416 (Pa. Cmwlth 2002).

9. In 2015, in *Watts v. Manheim Twp. School Dist.*, 121 A.3d 964 (2015), the Supreme Court of Pennsylvania said, “School boards do not have unfettered discretion; courts have authority to interfere when a school board’s action is based on a misconception of law, ignorance through lack of inquiry into facts necessary to form intelligent judgment, or the result of arbitrary will or caprice or improper influences or in violation of law.” (See also *Hibbs v. Arensberg*, 276 Pa. 24, 119 A. 727, 728 (1923)).

10. If such an abuse of discretion occurs, then it is amenable to the injunctive process, an equitable remedy. *Watts* at 972; *See also Landerman v. Churchill Area Sch. Dist.*, 414 Pa. 530, 200 A.2d 867, 869 (1964).

11. Section 609 of the Pennsylvania Public School Act of 1949 states, “The amount of funds in any annual estimate by any school district, at or before the time of levying the school taxes, which is set apart or appropriated to any particular item of expenditure, shall not be used for any other purpose, or transferred, except by resolution of the board of school directors receiving the affirmative vote of two-thirds of the members thereof.”

12. Act 14, Section 687(d) of the Public School Act states, “The board of school directors shall have power to authorize the transfer of any unencumbered balance, or any portion

thereof, from one class of expenditure or item, to another, but such action shall be taken only during the last nine (9) months of the fiscal year. (*See also, Shoemaker v. Greencastle-Antrim School Board*, 44 Pa. Cmwlth, 136, 403 A.2d 1018 (1979); N.T. 6/14/16 Hearing at pp.145-148).

13. Section 6-688 of Act 48 of 2003, entitled “Limitations on Certain Unreserved Fund Balances”, prohibits a school district from increasing real estate taxes for a school year unless the school district has adopted a budget for such school that includes an estimated ending unreserved, undesignated, unassigned fund balance which is not more than eight (8) percent of the budgeted expenditures. (*See also* Plaintiffs’ Hearing Exs. 16, 20; N.T. 6/14/16 Hearing at pp. 67, 71, 74, 142, 143).

14. Under Pennsylvania Act No. 1 of the Special Session of 2006, as amended by Act 25 of 2011 (“The Taxpayer Relief Act” or “Act 1”), a school district may not, in fiscal year 2007-2008 or in any subsequent fiscal year, levy any tax for the support of the public schools which was not levied in the 2006-2007 fiscal year, raise the rate of any earned income tax and net profits tax if already imposed under the authority of the Local Tax Enabling Act (Act 511), or increase the rate of any tax for school purposes by more than the Index (Index for Fiscal Year 2016-2017 is 2.4%) unless in each case either (a) such increase is approved by the voters in the school district at a public referendum or (b) one if the exceptions summarized below is applicable and the use of such exception is approved by the Pennsylvania Department of Education (PDE). (*See also* N. T. 06/14/16 Hearing at pp. 105, 199).

THE WOLK LAW FIRM

By: /s/ Arthur Alan Wolk
 Arthur Alan Wolk, Esquire (02091)
 Attorney for Plaintiffs/Pro Se

CERTIFICATE OF SERVICE

I, Arthur Alan Wolk, hereby certify that on July 11, 2016, a true and correct copy of the attached Plaintiffs' Findings of Fact and Conclusions of Law in Support of their Petition for Injunctive Relief, was served in the manner indicated upon the following:

Via Email & First Class Mail

Michael D. Kristofco, Esq.
Wisler Pearlstine, LLP
460 Norristown Road, Suite 110
Blue Bell, PA 19422

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By: /s/ Arthur Alan Wolk
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