

Decision in Favor of District in School Property Sale Case

The Eleventh District Court of Appeals recently released its decision in *Nolda Ray Allen v. the Board of Education of the Southington Local School District*, Case No. 2014-T-0082, involving the sale of school property under Ohio Revised Code 3313.41(C).

The Southington Local School District, following the construction of a new K-12 facility, was faced with two choices regarding one of its former school buildings: either demolish the building at taxpayer expense or find a way to continue the use of the building for public purposes. The School District Board chose to sell the building to Southington Township for a purchase price of \$1,397.57, which represented half of the costs of obtaining a lot split and survey, but on the condition that the building continued to be used for public purposes. The sale was pursuant to Ohio Revised Code 3313.41(C), which allows a school district board of education to sell property valued at more than \$10,000 to one of the entities specified in that statute, such as a township, a county or a municipality, "upon such terms as are agreed upon" and without having to first offer the property for sale at public auction under Ohio Revised Code 3313.41(A). The plaintiff challenged the sale of the land, valued at more than \$10,000, claiming that Ohio Revised Code 3313.41(C) required that the School District receive a purchase price of at least \$10,000 and that the School District essentially gifted the property to the Township.

In rejecting this argument, the court held that, while Ohio Revised Code 3313.41 governs the process a school district must follow when disposing of property valued \$10,000 or more, it does not mandate a minimum purchase price and the language "upon such terms as are agreed upon" gives discretion for a school district to sell property for a purchase price of less than \$10,000 (The process under Ohio Revised Code 3313.41 would not apply at all to sales of property valued at less than \$10,000). Moreover, the court concluded that the nominal purchase price of \$1,397.57 did not constitute an illegal gift as there was an exchange of money, even though it was for less than \$10,000.

Recent Decisions of Interest

Public Records. In response to a public records request, the board of education was required to produce replacement teachers' names unredacted. The court reasoned that the right-to-privacy exception from disclosure did not apply, because the danger of retaliation against the replacement teachers had receded at the time of the court's decision. *State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn.*, 2015-Ohio-1083 (Ohio Supreme Court).

Public Records. The county's response call to a 9-1-1 call is a public record not entitled to the disclosure exceptions for trial-preparation records, law-enforcement investigatory records or records the release of which is prohibited by state or federal law, under Sections 149.43(A)(1)(g), 149.43(A)(1)(h) and 149.43(A)(1)(v) of the Ohio Revised Code, respectively. *State ex rel. Cincinnati Enquirer v. Sage*, 2015-Ohio-974 (Ohio Supreme Court).

Oil and Gas. The Home Rule Amendment to the Ohio Constitution does not permit a municipality to "discriminate against, unfairly impede, or obstruct" oil and gas activities and operations that the State of Ohio has permitted under the regulatory scheme relating to the extraction of oil, gas and other minerals contained in Chapter 1509 of the Ohio Revised Code. *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485 (Ohio Supreme Court).

Automated Traffic Law Enforcement. A traffic ordinance authorizing automated traffic-law-enforcement system that assesses civil penalties for violations does not infringe on the jurisdiction of the municipal court because municipalities have the authority to impose civil liability on traffic violators through administrative enforcement under the Home Rule Amendment to the Ohio Constitution. *Walker v. Toledo*, 2014-Ohio-5461 (Ohio Supreme Court).

Automated Traffic Law Enforcement. Based on the authority of *Walker v. Toledo*, above, the Ohio Supreme Court reversed the decision of the Eighth District Court of Appeals regarding City of Cleveland's automated traffic law enforcement system. *Jodka v. Cleveland*, 2015-Ohio-860 (Ohio Supreme Court).

Schools Facilities. A trial court erred in dismissing for lack of jurisdiction a school board's action to declare that the Ohio Schools Facilities Commission failed under Chapter 3318 of the Ohio Revised Code to assess needs of its school facilities and to fund state's share of expenses, because the school district was seeking equitable relief, not money damages, and the Court of Claims lacks jurisdiction over mandamus actions. *State ex rel. Midview Local School Dist. Bd. of Edn. v. Ohio School Facilities Comm.*, 2015-Ohio-435 (Ohio App. 9th Dist.).

Forfeited Property Subject to Liens and Encumbrances. A municipality, county or township that acquires forfeited property under Section 5723.01(A)(3) of the Ohio Revised Code takes “all the right, title, claim, and interest of the former owner,” and if the former owner’s title to the property includes any liens and encumbrances, the municipality, county or township takes title to the property subject to those liens and encumbrances. 2015 Op. Att’y General No. 2015-005.

Regional Council of Governments for Public Safety Answering Point. A board of county commissioners and a municipal corporation may establish a regional council of governments (i) to operate a public safety answering point (i.e., a facility to which 9-1-1 calls for a specific territory are routed for response) under Chapter 128 of the Ohio Revised Code, and (ii) if the regional council of governments is authorized to act on behalf of the board of county commissioners under Section 167.03(C) or 167.08 of the Ohio Revised Code, to operate a countywide public safety communications system (i.e., a system of communication facilities, equipment and services that helps to provide immediate field exchange of police, fire and emergency medical services information) under Section 307.63 of the Ohio Revised Code. This Attorney General Opinion also provides guidance on the permissible funding arrangements for dispatch services provided in association with a public safety answering point. 2015 Op. Att’y General No. 2015-004.

Fiscal Officer of Regional Council of Governments. Under Section 167.06 of the Ohio Revised Code, a county auditor may serve as the fiscal officer of a regional council of governments. 2015 Op. Att’y General No. 2015-004.

Joint Economic Development District Income Tax. An income tax levied in a joint economic development district may not exempt from that income tax the income of persons working in the joint economic development district or the net profits of businesses operating in the joint economic development district. 2015 Op. Att’y General No. 2015-002.

County Investment of Inactive Moneys. A county treasurer who serves as the county investing authority may invest inactive moneys of the county in a bond issued by the board of county commissioners of the treasurer’s county, as authorized by Section 135.35(A)(4) of the Ohio Revised Code, even though the county investment advisory committee, which is composed of the county treasurer and two of the county commissioners, must amend its investment policies to permit the investment. 2014 Op. Att’y General No. 2014-039.

Legislation of Interest

Substitute House Bill Number 5. This Bill significantly modifies Ohio municipal income tax law. Its provisions take effect for municipal income taxable years that begin on or after January 1, 2016. See the Squire Patton Boggs [summary of the Bill](#).

Amended Substitute House Bill Number 494 (effective March 20, 2015). This Bill authorizes two or more counties, with the approval of the Director of Transportation, to enter into cooperative agreements creating a regional transportation improvement project (RTIP) to fund eligible transportation improvements. A RTIP may be funded by a regional motor vehicle license tax, subject to approval of the board of county commissioners and of the voters in each participating county. The tax may be levied in increments of \$5, not to exceed \$25 per motor vehicle. A RTIP may issue revenue securities to pay for projects.

The Bill also authorizes municipal corporations and townships to create a community entertainment district as part of a joint economic development district (JEDD) contract.

Amended Substitute Senate Bill Number 342 (effective March 23, 2015). This Bill regulates the use of traffic law photo-monitoring devices, including by requiring a law enforcement officer be present at the location of the device during its operation. Several cities have challenged the constitutionality of this Bill.

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