

Formal School Board Approval Required For Legal Settlements To Be Valid

The Pennsylvania Commonwealth Court in *Berkheimer Associates v. Norco Motors* (January 16, 2004), rendered an important decision impacting on Pennsylvania school boards and their agents. In the *Berkheimer* case, the Court found that an authorized agent, e.g., tax collector, of a school district does not have authority to enter into a settlement agreement unless the local school board has voted affirmatively to approve such settlement at a public meeting in accordance with Section 5-508 of the Public School Code.

In the *Berkheimer* case, Berkheimer was the authorized collector of the privilege/mercantile tax for Owen J. Roberts School District. Berkheimer filed a complaint against Norco for failure to report and pay mercantile taxes. After communication about a possible settlement, Berkheimer's attorney informed the court that the parties were in agreement on the key settlement terms. Several months later, the school district's attorney informed Berkheimer that they did not wish to settle. Subsequently, the taxpayer filed action in court to enforce the proposed settlement. The trial court enforced the settlement on the basis that Berkheimer was acting as the school district's agent. However, the Commonwealth Court overturned the trial court because the school board had not approved the actual settlement in accordance with Section 508 of the Public School Code.

In rendering its decision, the Commonwealth Court pointed out that Section 508 requires an affirmative vote of a majority of all school board members to enter into any contract/agreement that exceeds \$100.00. As such, a school board's settlement approval authority cannot be delegated to a school district's agent such as a tax collector, attorney, etc. Hence, in order to be legally effective, all proposed settlement agreements exceeding \$100.00 must be voted on and approved by the majority of an entire school board at a public school board meeting in accordance with Section 508 of the Public School Code and the Sunshine Act.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.