

Court of Common Pleas of Montgomery County--Civil Action

Arthur Alan Wolk, et al., Plaintiffs : No. 16-01839  
: :  
v. : :  
: :  
School District of Lower Merion, Defendant : :  
: :

---

**DECISION/ORDER SUR PETITION FOR INJUNCTION**

**I. Introduction**

This case presents the issue of a school district announcing to the public budgets projecting multimillion-dollar deficits every fiscal year, experiencing at the end of each year multimillion-dollar surpluses, and raising taxes on the residents all the while. Taxpayers of the district seek to enjoin this practice in fiscal year 2016-2017 based on violations of amendments to the Public School Code of 1949, 24 P.S. §§ 6-609, 6-687, 6-688, and the Taxpayer Relief Act (Act 1) of 2006, 53 P.S. § 6926.333, as amended in 2011.

**II. Procedural Background**

On February 1, 2016, three taxpayers of Lower Merion School District filed a complaint seeking to prevent the District from imposing a 4.44% tax on residents for the fiscal year 2016-2017. The taxpayers sought class-action status for all taxpayers of the District, an issue not addressed in this decision.

Under the Pennsylvania Rules of Civil Procedure, Pa.R.C.P. 1028 (prior to 2016 amendment), the School District preliminarily objected to the complaint. The taxpayers filed an amended complaint, and the District preliminarily objected to that; the preliminary objections were argued before another Judge of this Court August 11, 2016.

On May 23, 2016, the taxpayers filed a petition for an injunction, seeking to enjoin the District from enacting any tax increase for the fiscal year 2016-2017. This Court, per the

undersigned, held a hearing on the petition June 14, 2016. At the hearing, the parties reported that the previous evening the board of the School District had passed a 4.44% tax increase, which the taxpayers had sought to prevent. The Court allowed the taxpayers to amend the form of relief requested in the petition to seek now an order directing the School District to rescind the tax increase and/or refund any taxes paid under it.

At the hearing, two witnesses testified, both called by Plaintiffs. Keith Knauss, a member of the school board of Union-Chadds Ford School District in Chester County for ten years and chairman or member of its finance committee during that time, who had followed the Lower Merion School District's budgetary practices both during and after his tenure, testified for the taxpayers. (Pls.' Pet. Injunctive Relief Tr. 12-116, June 14, 2016.) Victor Orlando, business manager for Lower Merion School District responsible for its budgetary affairs, testified after being called as on cross-examination by the taxpayers. (Injunctive Relief Tr. 117-230.)

At the conclusion of the hearing, the Court asked for the parties' proposed findings of fact and conclusions of law to be filed by July 11, 2016, and for the parties' responses to their opponents' respective submissions to be filed by July 20, 2016. The parties complied. The matter of the injunction is now ripe for resolution.

### **III. Narrative Findings of Fact**

The two witnesses who testified at the hearing did not disagree about most of the material facts of this case. For the most part, the parties differ only over the legal consequences.

The Court admitted into evidence the District's proposed budgets for revenues for fiscal years 2008-09 through 2016-17. (Injunctive Relief Tr. 28-32 & Ex. P-12.) Those schedules reflected that at the start of nearly every fiscal year during that period the "fund-balance funds" designated or assigned as revenue for the coming year grew from the previous year, from

\$5,295,979 in 2008-09 to \$9,335,540 in 2016-17. Plaintiff’s witness referred to these budgetary plans as advertising to the public that the District would engage in “deficit spending.”

(Injunctive Relief Tr. 20:7, 25:19, 27, 33:4-5; *accord* Injunctive Relief Tr. 154).

Yet the budgetary projections at the start of every fiscal year that the District would need to use money in the District’s reserves to balance the budget never panned out. In fact, for every fiscal year from 2008-09 through 2014-15, the School District passed a budget that projected multimillion-dollar deficits, yet year-end audits showed multimillion-dollar surpluses, amounting to a total during that span of over \$42,500,000. (Injunctive Relief Tr. 33-34, 41-46; *accord* Injunctive Relief Tr. 214.) If distributed to the taxpayers of the District that accumulated surplus would represent a \$1400 to a median household. (Injunctive Relief Tr. 46.)

According to budgetary-comparison schedules prepared for the District by certified public accountants Rainer & Company, the discrepancies between the predicted deficits in the District’s amended final budgets for the fiscal years ending June 30, 2010, through June 30, 2015, and the actual surpluses realized at the ends of those fiscal years, were as follows:

<b>Fiscal Year</b>	<b>Deficit Predicted in Final Budget</b>	<b>Actual Surplus at End of Year</b>	<b>Variance with Final Budget</b>
2009-10	(\$4,790,357)	\$9,520,959	\$14,311,316
2010-11	(5,632,954)	2,157,693	7,790,647
2011-12	(5,101,371)	15,537,492	20,638,863
2012-13	(8,820,402)	5,168,620	13,989,022
2013-14	(7,522,634)	6,105,931	13,628,565
<u>2014-15</u>	<u>(7,517,643)</u>	<u>4,117,736</u>	<u>11,635,379</u>
6-year totals:	(\$39,385,361)	\$42,608,431	\$81,993,792

(Injunctive Relief Tr. Exs. P-13, -13a, -13b, -13c, -13d, -13e; *see* Injunctive Relief Tr. 41-44; *see also* Injunctive Relief Tr. 213-14.)

Thus, for example, for the most recent fiscal year for which final audited figures were available, 2014-15, the School District finished the year with a surplus of over \$4,100,000, when

the District in its budget for that year had projected more than a \$7,500,000 deficit. (Injunctive Relief Tr. 36-37; *accord* Injunctive Relief Tr. 217.) The District's budgetary miscalculation for that fiscal year alone was thus more than \$11,600,000. (Injunctive Relief Tr. 36-38; *accord* Injunctive Relief Tr. 217-18.)

Final audits were not yet in for fiscal year 2015-16 at the time of the hearing. Although the District's business manager had looked at the final projections the month before, he testified, not entirely credibly in the Court's estimation, that he was unable to predict whether there would be a surplus or deficit at the end of the fiscal year which came to a close little more than two weeks after the hearing, and that, though he was tracking a surplus the last time he had checked, he could not remember how much of one. (Injunctive Relief Tr. 149, 222-223.) Plaintiff's witness also testified that the District's current projections estimated there would be a surplus for fiscal year 2015-16. (Injunctive Relief Tr. 54.) However, as in all years past for which evidence was presented, the District at the beginning of the fiscal year had budgeted to dip into its reserves, to the tune of \$9,449,885, to use as revenues to balance the budget. (Injunctive Relief Ex. P-12.)

In every fiscal year involved, the School District in its published budgets overestimated actual fiscal-year expenditures and underestimated revenues in a combined amount of several million dollars. The average overestimation of expenses was 5.5% per year. The average underestimation of revenues was 1.1% per year. (Injunctive Relief Tr. 48-49, 53.)

In each year of projecting a deficit in the budget published to the public, the School District did so in connection with proposing a tax increase. (Injunctive Relief Tr. 57.) 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. (Injunctive Relief Tr. 125, 214, 216-218.)

Including the recently-enacted tax increase for 2016-17, since 2006 the School District has raised its taxes by a total of 53.3%. (Injunctive Relief Tr. 228 & Ex. P-22.) Mr. Orlando estimated the School District has approximately \$50,000,000 to \$60,000,000 in the bank. (Injunctive Relief Tr. 139-40.)

The Court extrapolates that the District will, if its tax increase for 2016-17 stands, have a multimillion-dollar year-end surplus for fiscal year 2016-17 rather than the \$9,300,000 deficit projected in the District's budget (Injunctive Relief Tr. 25; *accord* Injunctive Relief Tr. 219; *see also* Injunctive Relief Tr. Ex. P-12) following the pattern of every other fiscal year budgeted by the District over the relevant time period. We base this finding in part on the similarity of the deficit projected to that in all other years in which there turned out to be a surplus and the similar methodology of the accounting and budgeting practices used by the District to arrive at the 2016-17 budget (Injunctive Relief Tr. 84-90; *see* Injunctive Relief Tr. 152) as well as the District's overstatement of its debt service in the 2016-17 budget (Injunctive Relief Tr. 173, 175, 212-13).

A 2003 amendment to the Public School Code provides that, for the 2005-2006 school year and each school year thereafter, no school district may approve an increase in taxes unless it has adopted a budget that includes an estimated ending unreserved, undesignated fund balance less than a certain percentage of the district's total budgeted expenditures. 24 P.S. § 6-688(a). Based on the size of Lower Merion School District's total yearly budgeted expenditures, the statutory cap on its "estimated ending unreserved, undesignated fund balance" is 8%. *Id.*

Although each of the School District's budgets technically complied with this Act by estimating less than 8% of total budgeted expenditures in ending unreserved, undesignated fund

balance, at the end of each fiscal year the District wound up with more than 8% of total budgeted expenditures in the form of surpluses. Surpluses at the end of the fiscal year are, by definition, ending unreserved, undesignated, or unassigned fund balance. (Injunctive Relief Tr. 216-17.)

The School District dealt with this issue by, after the end of the fiscal year, transferring surpluses from undesignated funds to other, designated accounts, such as the capital account. (Injunctive Relief Tr. 45-46, 53-57, 68, 70-71, 74, 107-110.) Mr. Orlando made such a transfer from the surplus fund to the capital account in November 2015, pursuant to authorization of the school board passed in June 2015. (Injunctive Relief Tr. 141-48.) He estimated the District currently had about \$20,000,000 in unassigned fund balance. (Injunctive Relief Tr. 139-40.)

Consistently with the pattern of the previous seven years, the School District's budget for 2016-2017 projected a multimillion-dollar deficit. Against this backdrop, the night before the hearing of June 14, 2016, the School District passed a 4.44% tax increase for 2016-2017.

The Taxpayer Relief Act (Act 1), subject to certain exceptions to be discussed, prohibits a school district from “[i]ncreas[ing] the rate of a tax levied for the support of the public schools by more than the index.” 53 P.S. § 6926.333(b)(1). The “index,” which is promulgated by the Pennsylvania Department of Education, 53 P.S. § 6926.333(l), is set for the current fiscal year at 2.4%, as the parties agreed. (Injunctive Relief Tr. 20-21.)

One way for a school district to raise taxes above the 2.4% “index” is by submitting the proposed tax to the voters in a referendum. 53 P.S. § 6926.333(c). Another is to obtain approval from the Department of Education under 53 P.S. § 6926.333(j).

In this case the School District, as it had done over the previous years covered by the testimony, obtained such approval from the Department of Education to raise taxes by 4.44%, that is, 2.04% beyond the 2.4% index, by representing to the Department needs to cover

anticipated costs of special education and employees' pensions as permitted under 53 P.S. § 6926.333(f)(2)(v), (n). (Injunctive Relief Tr. 20-23.) However, neither the District's proposed budgets nor the actual surpluses it experienced in prior years accompany the requests to the Commonwealth for exemptions from the index, which are made at the beginning of the budgeting process. (Injunctive Relief Tr. 128-36.)

In fact, just as the District's final audits every year showed multimillion-dollar total surpluses when the District's budgets had projected multimillion-dollar deficits, for every fiscal year from 2010 through 2015 the audits disclosed year-ending surpluses ranging from hundreds of thousands to millions of dollars in expenditures for special education, classified under the heading "Special Programs." (Injunctive Relief Tr. Exs. P-13, -13a, -13b, -13c, -13d, -13e.) Similarly, the District had, at the time of the hearing, \$15,300,000 in a "committed fund balance" (Injunctive Relief Tr. 226:15) for retirement, but that fund was not being used for pensions or to reduce the District's contributions to pensions, which were being funded out of the budget each and every year. (Injunctive Relief Tr. 226-27.) If, consistently with the pattern that has played out over nearly a decade, a multimillion-dollar surplus materializes at the end of fiscal year 2016-17 instead of the 9.3-million-dollar deficit the District has projected in its budget, a tax increase less than the statutory "index" of 2.4% would be sufficient to cover any budgetary imbalance.

#### **IV. Legal Conclusions**

Lower Merion School District, over the course of approximately the last ten fiscal years, deliberately engaged in a course of conduct that (1) overestimated in budgets, to the tune of millions of dollars, the deficits the District would incur in the fiscal year ahead, and published these estimates to the public to justify tax increases; (2) failed to predict, although the data was

patently clear from past years' experience with the budgets, that the District would actually end the fiscal year with a multimillion-dollar surplus; (3) raised taxes for the fiscal year above the 2.4% limit imposed by 53 P.S. § 6926.333 without a referendum of the voters by consistently representing to the Pennsylvania Department of Education that costs for pensions and special education could not be covered without a tax increase so as to qualify for a Department-approved exception to the law's requirement of a referendum for a tax increase above that limit; (4) after the surpluses run up partly due to the tax increases had been realized at the end of the fiscal year, transferred money from "unassigned" or "general reserve" funds to other assigned accounts to avoid the statutory cap of 8% of the annual budget that 24 P.S. § 6-688 allows a school district with a budget the size of Lower Merion's to allocate to unassigned or general funds while still raising taxes.

In the Taxpayer Relief Act, the General Assembly prohibited a school district from raising taxes beyond an "index" established by the Department of Education without submitting the proposed tax increase to a referendum of the voters of the district. 53 P.S. § 6926.333(a)(2), (b)-(c), (l). The "index" is set at 2.4%, so for Lower Merion School District to raise taxes more than that, it ordinarily would have had to put its proposed tax increase for 2016-17, and for the years preceding that, to a referendum of the voters.

Instead, each year, including 2016-17, the District sought to raise taxes beyond the index by justifying to the Department an exception to the requirement of a referendum based on projected costs for special education and pensions, pursuant to 53 P.S. § 6926.333(f)(v), (j), (n). The Department approved the District's 2016-17 request to raise taxes by 4.44%, or 2.04% beyond the index, based on the District's representations to the Department that anticipated costs for special education and pensions would require the tax increase. On the eve of the hearing on

the taxpayers' petition for injunction, June 13, 2016, the board of the School District raised taxes by the 4.44% approved by the Department.

The Taxpayer Relief Act did not require the District to submit to the Department a proposed budget in conjunction with the request to raise taxes. The Act did not require the District to disclose to the Department that, in every fiscal year since at least 2009-10 the District had passed budgets projecting multimillion-dollar deficits for the coming fiscal year, but every year had multimillion-dollar surpluses, according to its official final audits, which the District in the course of the next fiscal year then transferred, at least in part, into other, accounts dedicated for particular purposes.

In a 2003 addition to the Public School Code, the Pennsylvania General Assembly, effective the 2005-2006 school year and each school year thereafter, imposed a prohibition on a school district's approving an increase in real-property taxes unless the district has adopted a budget that includes less than a given percentage of total budgeted expenditures in "estimated ending unreserved, undesignated fund balance." 24 P.S. § 6-688(a). For a school district with total budgeted expenditures of over \$19,000,000, which Lower Merion School District is, the given percentage is 8%. *Id.*

The amendment further provides,

By August 15, 2005, and August 15 of each year thereafter, each school district that approves an increase in real property taxes shall provide the Department of Education with information certifying compliance with this section. Such information shall be provided in a form and manner prescribed by the Department of Education and shall include information on the school district's estimated ending unreserved, undesignated fund balance expressed as a dollar amount and as a percentage of the school district's total budgeted expenditures for that school year.

*Id.* § 6-688(b).

As used in this section, "estimated ending unreserved, undesignated fund balance" means

that portion of the fund balance which is appropriable for expenditure or not legally or otherwise segregated for a specific or tentative future use, projected for the close of the school year for which a school district's budget was adopted and held in the General Fund accounts of the school district.

*Id.* § 6-688(c).

Another section of the Public School Code provides, in part,

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.

No work shall be hired to be done, no materials purchased, and no contracts made by any board of school directors which will cause the sums appropriated to specific purposes in the budget to be exceeded.

24 P.S. § 6-609.

With respect to school-district budgeting practices in general, the Public School Code provides detailed constraints and instructions providing, in part, as follows:

(a) (1) The board of school directors of each school district of the second, third, or fourth class shall, annually, at least thirty (30) days prior to the adoption of the annual budget, prepare a proposed budget of the amount of funds that will be required by the school district in its several departments for the following fiscal year. Such proposed budget shall be prepared on a uniform form, prepared and furnished by the Department of Education. The uniform form shall require identification of specific function, subfunction[,] and major object of expenditure. On the date of adoption of the proposed budget required under this section, the president of the board of school directors shall certify to the Department of Education that the proposed budget has been prepared [and] presented and will be made available for public inspection using the uniform form prepared and furnished by the Department of Education. The certification shall be in a form and manner as required by the Department of Education. Final action shall not be taken on any proposed budget that has not been prepared, presented[,] and made available for public inspection using the uniform form prepared and furnished by the Department of Education. Final action shall not be taken on any proposed budget in which the estimated expenditures exceed two thousand dollars (\$2000) until after ten (10) days' public notice. . . .

(2) (i) The proposed budget, on the uniform form required by the Department of Education, shall be printed or otherwise made available for public

inspection to all persons and shall be made available for duplication to any person, on request, at least twenty (20) days prior to the date set for the adoption of the budget.

....

(b) The board of school directors, after making such revisions and changes therein as appear advisable, shall adopt the budget and the necessary appropriation measures required to put it into effect. The total amount of such budget shall not exceed the amount of funds, including the proposed annual tax levy and State appropriation, available for school purposes in that district. Within fifteen (15) days after the adoption of the budget, the board of school directors shall file a copy of the same in the office of the Department of Public Instruction.

(c) The board of school directors may, during any fiscal year, make additional appropriations or increase existing appropriations to meet emergencies, such as epidemics, floods, fires, or other catastrophies [sic], or to provide for the payment for rental under leases or contracts to lease from the State Public School Building Authority or any municipality authority entered into subsequent to the date of the adoption of the budget. The funds therefor shall be provided from unexpended balances in existing appropriations, from unappropriated revenue, if any, or from temporary loans. Such temporary loans, when made, shall be approved by a two-thirds vote of the board of school directors.

(d) 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.*

24 P.S. § 6-687 (emphasis added).

As stated in the Lower Merion School District 2016-2017 Proposed Budget Book 20 (2016),

All school district finances start with a budget. In making budgetary decisions, the school board must balance a variety of competing interests and choose between what it finds necessary for a quality educational program and what its taxpayers can afford. The board is accountable to its citizenry for all its activities through a system of financial reports and audits, public and state oversight, and, of course, the election process.

....

. . . [A] school budget . . . is a legal document which sets limits on how much a district can spend for various purposes throughout the year and which

provides for other financial controls and accountability. Those controls and accountability are fundamentally important because school districts use public funds. Action taken in obtaining and spending these funds is part of the public trust given by citizens to their elected officials.

(Injunctive Relief Tr. Ex. P-7.)

In budgeting matters, the School District is bound by state guidelines for good accounting practices. (Injunctive Relief Tr. 152-54.) Good accounting practices applicable to the District's finances "do not use the fund balance for recurring expenses." (Injunctive Relief Tr. 27:10.) According to a manual of accounting and financial reporting for Pennsylvania public schools, "[B]usiness managers should be extremely careful when appropriating amounts from the fund balance. Fund balance amounts may result from a one-time funding source, and, therefore, will not be available to fund ongoing programs." (Injunctive Relief Tr. 28:8-13 (quoting Injunctive Relief Tr. P-21; *accord* Injunctive Relief Tr. 153-54.)

Although acknowledging that under these standards general fund balances should not be used for things like balancing the budget (Injunctive Relief Tr. 153-54) the District's business manager also admitted that four of the six years he had prepared budgets for the District he had used or proposed "[using] some of the unassigned fund balance to balance the budget." (Injunctive Relief Tr. 154:18-19.) He further acknowledged "that specifically is contrary to what that good accounting practice says." (Injunctive Relief Tr. 154:20-22.)

The 2003 amendment to the Public School Code provides no particular sanction for a school district's consistently ending the fiscal year with a greater percentage of total budgeted expenditures being carried as a surplus in "unreserved, undesignated fund balance" than the section allows. The Code provides no particular sanction for a school district's having a greater percentage of total budgeted expenditures in "unreserved, undesignated fund balance" at the end of the fiscal year than 24 P.S. § 6-688 would allow the district to estimate would be there in its

pre-fiscal year budget while still raising taxes, and no particular sanction for transferring any such surpluses into other, designated accounts at the end of the fiscal year when realized. *Cf. Cent. Dauphin Sch. Dist. v. Commonwealth*, 147 Pa. Commw. 426, 438, 608 A.2d 576, 582–83 (1992) (discussing “penalties” on school districts for violations of Public School Code relating to taxes as function of statute or regulation by the Department of Education). The Code provides no particular sanctions for a school district’s engaging in a persistent, unbroken pattern for many years of budgeting pre-fiscal-year for multimillion-dollar deficits, publishing these budgetary estimates to the public, raising taxes for the fiscal year ahead, and always experiencing multimillion-dollar surpluses by the end of the fiscal year.

In obtaining each year from the Department the required exemption under 53 P.S. § 6926.333 to permit taxes to be raised more than the baseline “index” of 2.4% without placing the increase before the voters in a referendum, the School District, in representing to the Department that projected costs for pensions and special education would require and justified the exemption under 53 P.S. § 6926.333, need not by law have disclosed to the Department that budgets for the preceding years consistently predicted multimillion-dollar deficits for the coming fiscal year and consistently were wrong in that multimillion-dollar surpluses were actually realized at the end of each fiscal year. Neither the Public School Code nor 53 P.S. § 6926.333 (Act 1, the “Taxpayer Relief Act”) provides any particular sanction for a school district’s representing to the Department that an exception based on special-education costs and pensions to Act 1’s index would be required to justify a tax increase beyond that threshold without disclosing, as the district knew or should have known based on budgetary projections and experiences over the last several years, that contrary to representations to the Department the District would have surpluses in its accounts in which it represented it would have deficits requiring a tax increase.

The School District's accounting practices may not incur a specific sanction of the statutes regulating them, but they are skirting the purposes of the law to prevent school districts from both accumulating a surplus over a certain percentage of the annual budget and raising taxes over a certain level without going to a referendum of the voters. The District's legerdemain 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, which it then transferred into other accounts, while every year seeking and obtaining the Commonwealth's permission to raise taxes beyond what would ordinarily be permitted without a referendum of the voters based on questionable cost estimates, was less than the transparent budgeting and taxing process the Public School Code and the Taxpayer Relief Act sought painstakingly to institute. The District's tax increases in these circumstances violated the spirit, and in some cases the letter, of these laws.

The remedy provided by the law for a school district's repeatedly and intentionally violating the intentment of the Public School Code in budgeting and taxing practices is an injunction against the practices by the courts. *See Mastrangelo v. Buckley*, 433 Pa. 352, 250 A.2d 447 (1969); *Cent. Dauphin Sch. Dist. v. Commonwealth*, 146 Pa. Commw. 32, 608 A.2d 564 (adjudication and decree nisi), *aff'd*, 147 Pa. Commw. 426, 608 A.2d 576 (1992) (issuing final injunction under Public School Code, 24 P.S. § 6-687(j), against tax imposed by school district)); *cf. Allegheny County v. Moon Twp.*, 436 Pa. 54, 258 A.2d 630 (1969) (affirming injunction against imposition of municipal tax as contrary to state statute).

The budget required is more than a mere estimate of probable revenues 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. These budget provisions are not directory but “in the highest degree mandatory.”

*Mastrangelo*, 433 Pa. at 365, 250 A.2d at 454 (citing *Leary v. City of Phila.*, 314 Pa. 458, 472, 172 A. 459, 465 (1934)).

[S]chool 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 . . . .” If such an abuse of discretion occurs, then it is amenable to the injunctive process, an equitable remedy in which the party seeking injunctive relief bears a heavy burden.

*Watts v. Manheim Twp. Sch. Dist.*, 121 A.3d 964, 972–73 (Pa. 2015) (quoting *Hibbs v. Arensberg*, 276 Pa. 24, 26-27, 119 A. 727, 728 (1923) (reversing denial of injunction against school board’s awarding of contract)) (affirming affirmance of permanent injunction against school board for decisions concerning student transport not in accordance with School Code).

Taxpayers and the public should be entitled to expect that governmental units taxing them will not year after year pursuant to a systematic pattern present them with projected deficits to justify raising taxes, raise taxes as a consequence, then record actual massive surpluses in the general fund at the end of each fiscal year, only to transfer the surpluses into other, designated accounts so that the source of the funds cannot be readily determined by those not directly involved in the governmental unit’s financial affairs. An injunction against this repeated practice of the Lower Merion School District is the only appropriate remedy to bring the illegal practice to a halt.

## **V. Injunctive Relief**

In consideration of the foregoing findings of fact and conclusions of law, the Court hereby *orders* as follows: The of Lower Merion School District is hereby *enjoined* from enforcing or collecting a tax increase for fiscal year 2016-17 of over 2.4% more than was in effect for the prior fiscal year. The board of the School District shall, not later than its next

scheduled meeting, adopt a resolution revoking the tax increase of 4.44% for fiscal year 2016-17, and enacting a tax that represents an increase of no more than 2.4% greater than the tax in effect for fiscal year 2015-16.

The Court will leave for another day and the appropriate forum the question of any rebates, refunds, or credits for taxes already paid to the tax collectors for the District for bills sent out reflecting the tax increase adopted by the board at its meeting June 13, 2016, the eve of the June 14 hearing. *Cf. Cent. Dauphin Sch. Dist. v. Commonwealth*, 146 Pa. Commw. 32, 608 A.2d 564 (adjudication and decree nisi), *aff'd*, 147 Pa. Commw. 426, 608 A.2d 576 (1992) (discussing in injunctive ruling tax abatement (reduction of tax assessments) or tax rebate (refund or return of moneys to taxpayers) under Public School Code, 24 P.S. § 6-687(g), declining to place specific time limitations on “prompt rebate”). We also decline for the present Plaintiffs’ requested relief of establishing a constructive trust in favor of taxpayers who have already paid the unlawful increase in taxes, pending determinations relating to the class-action status of this litigation.

In the event this injunction is construed as subject to Pa.R.C.P. 1531(b) concerning the filing of a bond or security, we hereby impose upon Plaintiffs the obligation to post a bond or security in accordance with the following guidelines: Based on the testimony of Plaintiffs’ witness (Injunctive Relief Tr. 46) that the surpluses accumulated by the School District, improperly as we have determined, would if redistributed back to the taxpayers result in a \$1400 refund to a median household, and that there are three named Plaintiffs prosecuting this suit, we hereby set the bond or funds Plaintiffs must post with the Prothonotary at 3 X \$1400, or \$4200, “conditioned that if the injunction is dissolved because improperly granted [Plaintiffs] shall pay to any person injured all damages sustained by reason of granting the injunction and all legally

taxable costs and fees . . . .” Pa.R.C.P. 1531(b); *see Walter v. Stacy*, 837 A.2d 1205, 1208 (Pa. Super. Ct. 2003) (“Although we held that the defendants were not limited by the amount of the bond in seeking damages for an improperly issued injunction, this court nonetheless recognized that Rule 1531(b) authorizes the trial court to set bond in an amount it deems proper under the circumstances . . . .” (citing *Christo v. Tuscan, Inc.*, 308 Pa.Super. 564, 454 A.2d 1042 (1983)).

**BY THE COURT:**

**Date:** Aug. 29, 2016

\_\_\_\_\_  
**Joseph A. Smyth, S.J.**