

ARTHUR STEWART & ASSOCIATES, P.C.
ATTORNEYS AT LAW

600 MARKET STREET
WARREN, PENNSYLVANIA 16365

(814) 723-3445

July 18, 2005

FAX (814) 723-7950

SENT BY E-MAIL AND FIRST CLASS MAIL

Dr. Norbert Kennerknecht
Warren County School District
185 Hospital Drive
North Warren, PA 16365

RE: Disposition of Elementary Schools

Dear Norbert:

I write in response to your letter of July 8, 2005. While trying to keep my research costs to a reasonable amount, I have had difficulty finding any law applicable to this topic.

In doing a general search on the internet, I have found numerous instances wherein unused public schools have been posted for sale on e-bay. However, using my WESTLAW database, I have done a nationwide search and have been unable to find any cases dealing with any litigation concerning the propriety of school sales on e-bay.

Of course, even if a nationwide search yielded results, the case holdings from other states are not binding precedent in Pennsylvania. Therefore, I have taken a particularly careful look at Pennsylvania case law. Again, utilizing my legal database, I have been unable to locate any Pennsylvania case law dealing with a school district's ability to sell its unused schools on e-bay. Indeed, I performed an even more generalized search examining the database for any e-bay entry item in Pennsylvania. I was unable to locate any such entries.

Because I am unable to find any cases which provide us guidance, we are, therefore, left with a situation wherein we must interpret Section 707 of the School Code as best we can on our own. Section 707(1) is the only section of the School Code which might arguably allow a sale to occur on e-bay. With the hard copy of this letter, I have enclosed a photocopy of that section.

From reading that statutory section, we observe that even if the school is listed on e-bay, the School District would nevertheless be obligated to publish notice of the sale in the *Warren Times Observer* once a week for three successive weeks. Additionally, the sale

Bids & Grounds

JUL 19 05

would need to be advertised by the placing of handbills on the properties and at adjacent locations. I believe that these steps could be accomplished by preparing advertisements that directed interested parties to the relevant e-bay site. (I am not an e-bay user; I am making the assumption that there is some way to direct interested parties to the e-bay site; that the e-bay site can be opened at least three weeks before the proposed sale date; and that terms and conditions can be made known via the e-bay site.)

In performing my research, I also examined the e-bay User Agreement. It is at this stage that I have significant concerns about whether e-bay is a permissible venue for sale under Section 707 of the School Code. In its User Agreement, e-bay describes itself as a "venue." Section 3.1 of the User Agreement is specifically titled: "E-bay is not an auctioneer." A portion of the text of that section reads as follows: "Although we are commonly referred to as an on-line auction website, it is important to realize that we are not a traditional 'auctioneer.' Instead, the site acts as a venue to allow anyone to offer, sell, and buy just about anything, at any time, from anywhere, in a variety of pricing formats, including a fixed price format and an auction-style format commonly referred to as 'on-line auctions' or 'auctions.'"

Frankly, because of this language, I have concern about whether the e-bay format qualifies as a "public auction" as that term is used in the School Code. To the extent that we guess wrong, we are putting our individual School Board members at risk – if a court would later determine that the e-bay site is not a public auction (as that term is used in the School Code), then our Board members would have committed an improper act and will suffer potential liability.

If we were under particular time pressures, the Board members might be willing to accept the liability inherent in pushing forward with the e-bay format. However, as you know, we have available to us the mandate waiver opportunity. In a relatively short timeframe, we can make application to the PDE for permission to sell on e-bay. If the PDE gives that permission, then there can be no possible allegation of Board member wrongdoing.

Because I am unaware of any urgent timetable and because it is our position to do our best to keep the Board members from any possible wrongdoing, I respectfully suggest that the District solicit a waiver prior to listing the elementary schools for sale on e-bay.

As a parenthetical aside, I observe that in several of the newspaper articles I reviewed (concerning sale of schools on e-bay), the districts had previously tried to sell the school buildings via normal methods and had been unsuccessful. Might it be prudent in the present situation to attempt to sell one or more of the elementary schools in one of the traditional ways (locally conducted auction or sealed bids)? If the sale does not yield a satisfactory result, we would then be in a position to make an effective application to the

11 10 11

Dr. Norbert Kennerknecht
July 18, 2005
Page 3

PDE for an e-bay waiver. It seems to me that is a no-lose proposition that lays a proper foundation for applying to PDE and receiving a favorable response.

I will be on vacation until August 2. In the interim, please contact my partner, Andrea Stapleford, with any additional questions.

Very truly yours,

Arthur J. Stewart

AJS/ame
Enclosure
c: Mr. John Grant
Ms. Jacki Nuttall

school district
erection of
other school
and charge a
rental shall
erty acquired
school district

eff. 10-21-65;
7-21, Act 291,

2.

to join with
township, or
ipping, oper-
ls, playgrounds,
s, and indoor
money there-
may levy an
dollar of the
n the school

(PL 30), eff.
1-21, Act 227,
4)

CTIONS

v Philadelphia
y to enter into
of organizing,
nile delinquen-
id punishment
ing conditions
ons with crimi-
id are not part

v Philadelphia
of 1949, public
r and for the
ry implication
ective does not
that action is
the legislature.

unnecessary

strict is here-
authority to
buildings, by
to the follow-

(1) By public auction, either on the premises to be sold or at places selected by the school board, after due notice by publication in one or more newspapers of general circulation published within the county or the school district and in the legal newspaper in said county, if any, once a week for three successive weeks before the date fixed for said sales, and by hand bills, one or more of which must be posted on the property proposed to be sold, and at least five of which must be posted at conspicuous places within the vicinity of said real estate. Terms and conditions of sale shall be fixed by the board in the motion or resolution authorizing the sale.

(2) Upon sealed bids requested by the school board, notice of the request for sealed bids to be given as provided in clause (1) of this section. Terms and conditions of sale shall be fixed by the board in the motion or resolution authorizing the request for sealed bids.

(3) At private sale, subject to the approval of the court of common pleas of the county in which the school district is located. Approval of the court shall be on petition of the board of school directors, which petition shall be executed by the proper officers of the board, and shall contain a full and complete description of the land proposed to be sold, a brief description and character of the building or buildings erected thereon, if any, the name of the prospective purchaser, the amount offered for the property, and shall have attached thereto an affidavit of at least two persons who are familiar with the values of real estate in the locality in which the land and buildings proposed to be sold are located, to the effect that they have examined the property, that the price offered therefor is a fair and reasonable one and in their opinion a better price than could be obtained at public sale, and that they are not interested, either directly or indirectly, in the purchase or sale thereof. Before the court may act upon any such petition it shall fix a time for a hearing thereon and shall direct that public notice thereof be given as provided in clause (1) of this section. A return of sale shall be made to the court after the sale has been consummated and the deed executed and delivered.

(4) In the case of land, or any interest therein, acquired by a school district of the first class at any sale on a tax or municipal claim, or on a bid submitted at any judicial sale, where the school district has an interest arising out of unpaid taxes against the premises being sold, or by voluntary conveyance in payment of taxes, the land so acquired may be sold by the school district of the first class, at public or private sale, pursuant to a resolution of the board of public edu-

cation of such school district, without advertisement, and without further proceedings or confirmation by the court.

(5) The board of school directors may, at their discretion, when selling real estate, sell and convey such real estate to the purchasers for the accepted consideration, payable partly in cash and partly in the form of a purchase money mortgage (and bond) to be paid in not more than five (5) years from the date thereof and bearing interest at the rate of not less than five (5) per centum, said mortgage and bond to contain the customary provisions requiring fire insurance and the payment of taxes, water rents, and assessments by the mortgagor and obligor.

(6) The board of school directors, when selling property at private sale, may engage the services of licensed real estate brokers to secure prospective purchasers, and pay them the customary real estate agents' commission charge within the school district, but only in the event the sale is actually consummated by the brokers.

(7) The moneys derived from sales of real estate enumerated in clause (4) of this section shall be paid into the general fund, along with moneys derived from taxes, and may be used for current expenses of the school district. The moneys derived from sales of other real estate shall be used for debt service or for capital expenditures.

(7.1) Notwithstanding the foregoing provisions of this section, the board of school directors may, upon approval of two-thirds (2/3) of its members, sell and convey real estate to a charitable organization holding exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.A. § 501(c)(3)) for the accepted consideration which may include, but not be limited to, payment partly in cash and partly in the form of a purchase money mortgage and bond to be paid in a period in excess of five (5) years from the date of the mortgage. The mortgage and bond shall contain the customary provisions requiring fire insurance and the payment of taxes, water rents, and assessments by the mortgagor and obligor.

(8) Notwithstanding the foregoing provisions of this section, any school district of the second, third or fourth class, upon approval of two-thirds (2/3) of the members of the board of school directors of such district, may convey any unused and unnecessary lands and buildings of the district to the city, borough, town or township, the boundaries of which are coterminous with or within those of the district or a volunteer fire company, volunteer ambulance service or volunteer rescue squad located within the district,