

Justices define the role of a court following a school district's decision to sell property

By Janet Burkardt, Esq.

Section 7-707(3) of the Public School Code of 1949 authorizes school boards to sell "any unused and unnecessary land and buildings" by several methods including by a private sale subject to approval of the court of common pleas of the county in which the school district is situated.



M. Janet Burkardt

Over the years, several conflicting opinions have been rendered by the Commonwealth Court regarding the discretion of the common pleas court when approving or disapproving such sales. In the Matter of Private Sale of Property by the Millcreek Township School District, No. 8 WAP 2017, decided on June 1, 2018, the Supreme Court of Pennsylvania finally resolved the interpretation of Section 7-707(3).

In Millcreek, the Millcreek Township School District determined that its former Ridgfield Elementary School, sitting on 7.9 acres, was no longer necessary to the operation of the District. The property contained a school building, a playground, a parking lot and open greenspace. When it closed the school in 2013, the District attempted to sell the property through a sealed bid process but received no bids.

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The District then listed the property for a private sale. Montessori Regional Charter School ("Montessori") offered the District \$1.1 million for the property but the District rejected the offer. Subsequently

VNet Holdings, LLC offered to purchase a portion of the property for \$1.1 million contingent on a zoning variance and a rezoning of the property for commercial use. After subdividing the lots, the District voted to

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How to comply with Pennsylvania law in the post Mann v. Palmerton landscape and prevent traumatic brain injury among student-athletes

By Victor Kustra, Esq.

Traumatic Brain Injury (TBI) is a major cause of death and disability in the United States and is a growing concern among athletes.¹ As the number of concussions among student-athletes continues to rise, Pennsylvania lawmakers and courts have imposed requirements on school districts and coaches to protect students from TBI.



Victor S. Kustra

The Third Circuit Court of Appeals decision in Mann v. Palmerton Area Sch. Dist., 872 F.3d 165 (3d. Cir. 2017), shed light on a school district's obligation to enact policies and concussion protocol training for school district employees. In Mann, Sheldon Mann, a football player for the Palmerton Area School District, experienced a hard hit during a practice session in November of 2011. Sheldon displayed obvious signs of a concussion, but told his coach that he was "fine" and able to return to practice. The head football coach permitted Sheldon to remain on the practice field and, unfortunately, Sheldon endured a second hard hit to the head. Sheldon ultimately suffered TBI as a result of these hits, and his parents filed a lawsuit against the football coach and the School District for their son's injuries.

In its decision, the Court held that the football coach was not liable for Sheldon's injuries under a state-created danger theory because the dangers of concussions were not obvious to a football coach in 2011 and there was no way to prove that the coach was aware of the dangers associated with sending Sheldon back on to the football field at that time. The Court also held that, under a Section 1983 civil rights theory, the School District was not liable for Sheldon's injuries. Sheldon's parents argued that the School District violated their son's constitutional right to bodily integrity because the coaches were not adequately trained on concussion recognition and protection and the School District failed to enact and enforce a specific concussion protocol for student-athletes. The Court ultimately held that the School District's lack of training and policy did not cause a violation of Sheldon's constitutional rights because there was no pattern of concussions among student-athletes in 2011. The Court also considered that the Safety in Youth Sports Act, which mandates training for coaches to prevent concussions, did not go into effect until July 2012, almost one year after Sheldon's injuries occurred.

The Mann decision reinforces that school districts should adopt and

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Decision to sell property, *continued*

accept VNet's offer to purchase the lot with the school building and decided to maintain the lots with the playground and greenspace.

The Court of Common Pleas of Erie County approved the sale based upon the submission of affidavits from two appraisers that the sale was fair, reasonable and a better price than the District could expect if the property was sold at a public sale. Montessori participated in the hearing in opposition to the sale and tendered a verbal offer from the witness stand of \$1.6 million for the entire property. The trial court held that such a "last minute tender" was not credible and that the District had satisfied the letter of the law through the evidence provided.

On appeal, the Commonwealth Court disagreed, overturned the decision of the trial court, and ordered the District to entertain further negotiations with Montessori or to conduct a public sale of the property. The Court opined "a public sale is the preferred way to do a sale of unused property under Section 707."

Senior Judge Pellegrini dissented and opined that the majority substituted its discretion for that of the District and ordered an improper remedy. The Supreme Court granted an allowance of appeal and agreed. The Court held that "the pertinent language of section 7-707 is unambiguous." The board of school directors is vested with the power and authority to sell unused and unnecessary lands and buildings and as such, the trial court's role in ruling upon a request for a private sale is constrained by the statute. It is limited to approving or disapproving the sale of school property based on its assessment of the evidence that the proposed sale price "is a fair and reasonable one and... a better price than could be obtained at public sale."

We're Speaking...

- At the 21st Annual Dr. Samuel Francis School Law Symposium and Special Education Workshop on June 27, 2018, Attorney Ira Weiss presented "Act 55: Major Changes in the Rules for Furloughs of School Employees." Attorney Rebecca Heaton Hall co-presented "Adherence to Best Practices and Legal Compliance to Promote School Safety and Emotional Wellness: Intervention, Prevention, and Assessment" with Dr. Jessica Dirsmith, NCSP.
- In July, Attorney Hall and Dr. Dirsmith presented "School Safety and Emotional Wellness Through Intervention, Prevention, and Assessment: Adherence to Best Practices and Legal Compliance for School Psychologists" at the 40th International School Psychology Association Conference in Tokyo, Japan.
- Attorney Megan Turnbull presented "Ethics for the Modern Solicitor" at the PSBA's School Solicitor Symposium in State College, PA on July 13, 2018.
- Attorneys Weiss, Turnbull, Jocelyn Kramer, and Annemarie Harr were among a panel of presenters and moderators at a program presented by the School and Municipal Law Section of the Allegheny County Bar Association on July 19, 2018. The program will consist of two parts: "School Safety: Proactive Interventions, Discipline and Law Enforcement" and "Solicitors and Their Relationships with Boards and Administration."
- On August 8, 2018, Attorney Turnbull will speak to the Erie County Bar Association on the topic of municipal claims, liens and collections.

Traumatic brain injury prevention, *continued*

enforce a concussion protocol policy consistent with the provisions outlined in the Safety in Youth Sports Act and implement concussion protocol training for all athletic coaches. Any athlete who displays visible signs of a concussion, such as confusion, dizziness or balance problems, loss of consciousness, or nausea/vomiting, should immediately be removed from play and evaluated by a medical professional.² Coaches should keep the athlete out of the sun, contact his or her parents/guardians, and ask the athlete's healthcare provider for written instructions on return to play.³

Though these actions were not taken in Mann, the School District and coach in that case were ultimately found not liable because of the lack of information available on TBI in 2011. As indicated above, coaches and school districts are much more knowledgeable about TBI and the Safety in Youth Sports Act has been in effect for over five (5) years. This means that any court faced with similar facts to those in Mann would likely rule against a school district and any coach involved.

Fall sports are right around the corner. Our office can assist your school district with drafting a policy and providing guidance on relevant concussion protocol training before the season starts in order to protect your students and ensure compliance with Pennsylvania law. Should you have any questions, please do not hesitate to reach out to any of our experienced attorneys.

¹ https://www.cdc.gov/traumaticbraininjury/get_the_facts.html

² https://www.cdc.gov/headsup/pdfs/custom/headsupconcussion_fact_sheet_coaches.pdf.

³ *Id.*

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This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.

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