

CLINTON TOWNSHIP BOARD OF  
EDUCATION,

Plaintiff,

v.

TOWNSHIP OF CLINTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON COUNTY  
DOCKET NO.: HNT-L-

CIVIL ACTION

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**PLAINTIFF CLINTON TOWNSHIP BOARD OF EDUCATION'S BRIEF IN  
SUPPORT OF ITS ORDER TO SHOW CAUSE**

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### **PRELIMINARY STATEMENT**

Since New Jersey residents pay one local property tax bill that goes directly to their municipality, it is commonly thought that the local government creates the entire budget and disperses the funds accordingly. This is a common misconception. Instead, a municipality collects taxes for its own budget, while also acting as the collection agent for the local board of education and the county government. Importantly, both the local board of education and the county government are autonomous government bodies, separate and apart from the municipality's government. Each is comprised of elected officials and each has the independent authority to establish its own budget.

For example, the Clinton Township Board of Education, like boards of education across the State, is required to determine its anticipated costs for the following school year and create a proposed budget that adequately meets these costs. The proposed budget must be discussed and approved at a public meeting no later than early March of each year. Once the proposed budget is approved, it is submitted to the Executive County Superintendent for Hunterdon County. The Executive County Superintendent has until April of each year to approve the budget. Once approved, the Board must adopt its final budget by May 14<sup>th</sup>. Once final budget is adopted, the amount to be assessed, levied, and collected is certified to the county board of taxation. The amount to be collected for the county government and the Board is then provided to Clinton Township. Clinton Township then totals the tax revenue needed to fund the Board's budget, the county's budget, and its own budget. This amount is then used to calculate what each property tax payer owes. Clinton Township then collects the local property taxes on behalf of the Board, the county, and itself.

A municipality's obligation to transfer the school taxes it collects to the board of education is well-settled. Within the first 40 days of the school year, the municipality must turn over 20% of the tax allocation. Thereafter, the Board makes payment requests to the municipality setting forth the amount of its taxes that are needed to meet its expenditures for the eight-week period. Once the municipality receives the request, the municipality is **required** to make the requisite payment within 30 days.

Case law and the statutory language have made clear that the taxes a municipality collects on behalf of the school district belong to the board of education, not the municipality. The municipality serves only as a "fiscal collection agent" with "**no discretion to decline to remit taxes**" to the board of education. In fact, since the school taxes belong to board of education and not the municipality, the municipality has no right to challenge the board of education's request for its tax revenue (such as alleging that the funds are not needed) or to require that the board invade its surplus or cash in its certificates of deposit. Instead, once the board of education makes a request for the payment of its tax revenue, the municipality has a "mandatory obligation" to make the payments. In essence, the Township serves as the Board's bank. Similar to a bank, the Township may collect interest on the Board's money or utilize it in certain circumstances. However, when the Board requests its school tax revenue, similar to a withdrawal at a bank, the money must be turned over. If the municipality lacks the cash on hand to make these payments, it is required by statute to "borrow moneys to pay the tax liability." Thus, a municipality has an absolute obligation to turn over the school tax revenue upon request by the board of education.

At the Clinton Township Board of Education's April 30, 2018 public meeting, it approved its municipal tax payment schedule for the 2018-2019 school year. This schedule was

provided to the Township on May 2, 2018. Thereafter, the Board has provided the Township with monthly letters, which were sent at least 30 days before each payment. The letters each stated that payments were needed to ensure that the Board has sufficient funds to operate and meet its monthly expenses.

Unfortunately, the Board was recently notified by its attorney's financial consultant that, due to Clinton Township's financial mismanagement and resistance to using its surplus, it is his professional opinion that the Township will not timely make the December 2018 and January 2019 payments. There are three crucial payments in December and January that must be paid:

December 15, 2018	\$2,349,232.00
January 1, 2019 – Debt Service	\$1,585,053.13
January 15, 2019	\$2,349,232.00

Failure to make any of these three will have severe implications. For example, defaulting on its debt services payment would decimate the Board's credit rating (thereby jeopardizing its ability to borrow money), whereas failing to receive the December 15<sup>th</sup> and January 15<sup>th</sup> payments would result in the Board possibly being unable to make payroll (thereby being unable to pay its teachers and other employees who rely on their paychecks to support themselves and their families), unable to make emergency repairs and necessary maintenance resulting from winter weather and other factors, and unable to maintain its monthly subscriptions to essential educational resources and systems such as the district's online IEP plan and general student information databases.

While the Board sent the Township its traditional letters demanding payment, due to the financial consultant's analysis, its attorney also sent the Township a letter on November 27, 2018 requesting that the Township confirm by December 3, 2018 that it will make the three payments

on the required dates. The Township was further notified that its silence would be taken as an acknowledgement that the payments will not be made timely.

The Township has ignored the Board's request for a confirmation. As a result, and for the reasons set forth below, judicial intervention is necessary to avoid the irreparable harm caused by the Township skirting its statutory obligation to transfer school taxes to the Board.

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## **FACTS**

### ***Background on Dispute***

In New Jersey, a local property tax bill is comprised of tax payments made to the municipality, the county, and the school district. (Barrett Cert., ¶3). Collections take place on a quarterly basis, with due dates of February 1<sup>st</sup>, May 1<sup>st</sup>, August, 1<sup>st</sup>, and November 1<sup>st</sup> of each year. (Barrett Cert., ¶5). To make matters easier for residents, the municipality acts as the collection agent for all three government entities, so that local residents only need to pay one local tax bill instead of three. (Barrett Cert., ¶3). The municipality then holds the tax revenue for the county government and local board of education in “trust,” until such time as it is required to turn over the revenue to the county government and local board of education. (Barrett Cert., ¶5).

Like all other school districts in the State, the Clinton Township Board of Education is reliant on Clinton Township to collect taxes on its behalf and transfer the funds in a timely manner to ensure it can meet its financial obligations. (Barrett Cert., ¶¶3-5). Unfortunately, over the last several years, the Township has struggled with financial insolvency. Due to increasing uncertainty regarding whether the Township could make its required payments, the Board’s attorney retained a private financial consultant, John E. Barrett of P.M. Consultants, LLC, to investigate the Township’s finances. (Barrett Cert., ¶2). Over the last few years, Barrett has conducted a historical analysis and continuously monitored the Township’s budget, revenue, and expenses, in order to get an overall picture of the Township’s financial situation. (Barrett Cert., ¶2). Based on his analysis, Barrett discovered that the Township was artificially maintaining its solvency -- without raising taxes or cutting expenses -- by using a tax deferral scheme, whereby it used the school taxes it collected to pay its own expenses. (Barrett Cert., ¶¶6-13).



This scheme was possible because the Township's fiscal year operates from January through December (i.e. the calendar year), whereas the Board's fiscal year operates from July through June (i.e. the school year). (Barrett Cert., ¶6). As a result, the Township collects half of the Board's tax revenue for the current school year on February 1<sup>st</sup> and May 1<sup>st</sup>, but does not begin making payments to the Board until July. (Barrett Cert., ¶¶6-8, 11). For example, for the 2018-19 school year, the Board's budget required that \$25.5 million be collected in school tax revenue (meaning that \$6.4 million was to be collected each quarter). (Barrett Cert., ¶7) On February 1, 2018 and May 1, 2018 the Township collect approximately \$6.4 million in tax revenue, for a total of around \$12.8 million (i.e., 50% of the total school taxes to be collected). (Barrett Cert., ¶7). Thus, before the Township had to make any payments to the Board beginning in July 2018, it had \$12.8 million in its bank account. (Barrett Cert., ¶7). While this money remains the Board's tax revenue -- with the Township remaining responsible for holding it in "trust" -- due to a cash flow shortage, the Township used the Board's tax revenue to pay its own expenses (hence the interest-free loan). (Barrett Cert., ¶¶5-14). Thus, the Township has used the tax revenue it collects for its own budget on August 1<sup>st</sup> and November 1<sup>st</sup>, to make the later in the year payments to the Board. (Barrett Cert., ¶¶7-8).

In essence, the Township's use of the tax deferral scheme is the equivalent to an individual paying off one credit card debt with another credit card. (Barrett Cert., ¶14). Similar to this individual, the Township lacked the cash to make its initial payment. As a result, it took out a loan from the Board (i.e., it used the Board's February 1<sup>st</sup> and May 1<sup>st</sup> tax revenue) to make its original payments. (Barrett Cert., ¶¶6-8). Of course, using a second credit card does not solve the problem; it only serves as a short-term bandage. (Barrett Cert., ¶¶13-14). The cash shortage again arises once the second credit card bill becomes due (i.e., the Township must make the later

payments to the Board). (Barrett Cert., ¶¶13-17). In the end, without the Township borrowing money, there are only two ways to solve this problem, the Township must generate more revenue (by raising taxes) or reduce its costs (by cutting the services it offers). (Barrett Cert., ¶17). Unfortunately, neither option is popular for the Township's elected officials.

### *The Current Problem*

On April 30, 2018, the Board approved at its public meeting the municipal tax payment schedule for the 2018-19 school year. (Cone Cert., ¶2; Exhibit "A"). This schedule was carefully crafted to ensure the Board can meet the operating expenses in its approved budget. (Cone Cert., ¶3). The schedule was provided to the Township on May 2, 2018. (Cone Cert., ¶4). In addition, approximately 30 days before each payment, the Board sent the Township a letter requesting that the payment be made in accordance with the schedule. (Cone Cert., ¶5; Exhibit "C"). For example, the Board sent the Township a letter regarding the December 15, 2018, which stated:

As you are aware, the Board approved [] its municipal tax payment schedule for the 2018-2019 school year at its April 30, 2018 meeting. The schedule was prepared to ensure the Board had sufficient funds to operate and meet its monthly expenses. As a result, should the Township fail to make timely payments of the Board's tax monies, the Board will be forced to defer payment on various critical items.

Based upon the approved tax payment schedule, the Board is anticipating receipt of its tax payment by **December 15, 2018** in the amount of **2,349,232.00**. On behalf of the Clinton Township Board of Education, I respectfully demand that the payment be made timely to avoid the aforementioned crisis.

(Cone Cert., ¶5; Exhibit "C")

Similar letters were sent for each payment, including a demand that the January 1, 2019 debt service payment be made timely.<sup>1</sup> (Cone Cert., ¶5; Exhibit "C").

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<sup>1</sup> There was a typographical error made in the 30 day letter requesting the January 1, 2019 debt service payment. The letter requested payment in the amount of \$515,053.13, which was the debt service payment due on July 1, ...Continued

In November 2018, the Board was notified by Barrett that his most recent assessment concluded that the Township will be have significant difficulties making its scheduled December 2018 and January 2019 payments. (Cone Cert., ¶6). As a result of this analysis, the Board sent the Township a letter on November 27, 2018, in which it reminded the Township of its obligations under the payment schedule and demanded that the Township make the December 15<sup>th</sup>, January 1<sup>st</sup>, and January 15<sup>th</sup> payments. (Cone Cert., ¶7). The letter further requested the Township provide confirmation no later than December 3, 2018 that payments would be made timely. (Cone Cert., ¶7). The letter warned that a failure to respond would result in the Board's request for emergent relief. (Cone Cert., ¶7).

The Board's request for confirmation has been ignored by the Township. (Cone Cert., ¶8). Thus, it is clear to the Board that the Township has no intention of meeting its obligations to provide the Board with its tax revenue on the requisite dates. (Cone Cert., ¶9).

### *Impact of Missing the Payments*

School districts require a predictable amount of cash flow to operate effectively and pay their bills, which include the payment of salaries, benefits, supplies, operational expenses, and debt service payments. (Barrett Cert., ¶4). Without these predictable payments, school districts have no ability to operate, as they would default on each essential payment. (Barrett Cert., ¶¶3-4, 18).

Importantly, the Board must pay its debt service payment by January 15, 2019. (Barrett Cert., ¶18). It has requested that the Township pay the funds needed to make this payment no later than January 1, 2019 (the two weeks are needed to ensure that the money transferred from

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...Continued

2018. The correct amount, as set forth in the payment schedule provided to the Township on May 2, 2018, is \$1,585,053.13. The correct amount was demanded on the Township in the letter sent to the Township on November 27, 2018. (Cone Cert., ¶5; Exhibit "C").

the Township clears, which then must be against transferred to the lender's bank account and clear). (Barrett Cert., ¶18). If the Board fails to make this payment, the impact would be drastic and irreparable. (Barrett Cert., ¶18). The Board would be considered in default, resulting in its credit rating being decimated. (Barrett Cert., ¶18). A poor credit rating will greatly diminish the Board's ability to take out future loans. (Barrett Cert., ¶18). Those banks that will lend money to an institute with a poor credit rating, only do so by charging exorbitant interest rates. (Barrett Cert., ¶18). The inability to take out a loan -- whether due to the lack of lenders or the cost-prohibitive interest rates -- will have a dramatic impact on the long-term educational services provided to the Board's students. (Cone Cert., ¶¶9-13). The Board has capital improvements and long-term goals that are essential to providing its students with an appropriate and competitive education. (Cone Cert., ¶¶9-13).

Simply put, the Township's failure to provide the required payments would put the district in an untenable financial position for both the short-term and the long-term. In the short-term, the Township's failure to make the December 15, 2018 payment may render the Board unable to make scheduled payroll on December 28, 2018, which may leave district employees unable to support their families and pay their bills while in the midst of the holiday season while also undermining employees' future confidence in the district's ability to make payroll. (Cone Cert., ¶10). The Township's failure to make the required payments would also leave the school district strapped for money right at the onset of winter; a time of the year when emergency repairs and required maintenance often accumulate. (Cone Cert., ¶11). In fact, the district's boilers used for heating the schools during the winter are antiquated and in need of continued maintenance as well as more large-scale repair and possible replacement, and there is also the

possibility that the district will have to allocate emergency funds for bursting pipes and other damage that occurs as a result of winter weather. (Cone Cert., ¶11).

The lack of payment might also cause the Board to default on monthly payments to vendors who render essential subscription services. (Cone Cert., ¶13). Services such as IEP Direct, which houses the district's essential special education materials; PowerSchool, which houses detailed information about the entire student body, such as student attendance records and student grades; and Google Apps for Education, which provides a great deal of instructional material that students utilize on a daily basis, could all potentially be shut down. (Cone Cert., ¶13). Any such shut-down of those services would bring the school district and its ability to educate its students to a grinding halt. (Cone Cert., ¶13).

In the longer term, the District also has to put money towards more large-scale projects. The district's sewage treatment plan is currently discharging clean water runoff onto neighboring property and is in imminent need of repair. (Cone Cert., ¶12). The air-conditioning units in the district's schools are over 50 years old, and the district's need to replace them became even more imminent after several school buildings were contaminated with mold at the start of this school year. (Cone Cert., ¶12). The Township's failure to provide the required tax payments would put all of these plans in jeopardy. (Cone Cert., ¶12).

### **LEGAL ARGUMENT**

"New Jersey has long recognized, in a wide variety of contexts, the power of the judiciary to 'prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.'" *Crowe v. DeGioia*, 90 N.J. 126, 132 (1982) (quoting *Thompson, Attorney General v. Paterson*, 9 N.J. Eq. 624, 625 (E.

& A. 1854)). In *Crowe*, the Supreme Court identified the factors courts must consider when determining whether to grant such relief:

1. The party seeking relief must show that it will suffer irreparable harm if the preliminary injunctive relief is not granted;
2. The party seeking relief must show that the relief it seeks is grounded in a settled legal right, and that it has a reasonable probability of success on the merits; and
3. The party seeking relief must show that the balance of the equities weighs in its favor.

*Crowe*, 90 N.J. at 132.

The facts of this case demonstrate that the Board meets these criteria, and that the Court should grant the injunctive relief requested in the Verified Complaint.

**I. THE BOARD WILL SUFFER IRREPARABLE HARM IF  
THE PAYMENTS ARE NOT TIMELY MADE.**

It is well-established that “a preliminary injunction should not issue except when necessary to prevent irreparable harm.” *Id.* Further elaborating on the concept of “irreparable harm” the New Jersey Supreme Court has stated:

Harm is generally irreparable in equity if it cannot be redressed adequately by monetary damages. In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief. . . . Pecuniary damages may be inadequate

*Id.* at 132-133.

Without question, the harm placed on the Board and its students should the Township not make timely payments would be irreparable. The impact on defaulting on its loan is not simply the interest charged for the late payment. Rather, the Board’s credit rating would be decimated, thereby preventing the Board from taking out future loans (either due to a lack of lenders or cost-prohibitive interest rates). Taking out low-interest loans is essential to the Board’s ability to undertake capital improvements and meet many of its educational goals. Thus, the educational

services provided to its students would be greatly affected should the Board default on its debt service payment.

The lack of timely payment by the Township and the long-term effects of a default on the district's debt service payment would cause unthinkable consequences in both the short and long-term. In the short-term, the Board may be unable to pay its employees, which may mean that those employees in turn will be unable to pay their bills or provide for their families. Those employees will undoubtedly lose faith in the Board's ability to consistently make payroll, which will have a drastic impact on the Board's relationship with its employees and likely will impact the educational services that are provided in the classroom. Some employees may seek jobs elsewhere. The Board would also be unable to pay for short-term emergency repairs and improvements, such as repair and replacement of the school's aging boilers as the winter sets in and to pipes bursting as a result of winter weather.

The Board may also be unable to pay its vendors who provide monthly educational subscription services, which may mean the loss of the school's online special education plan database, general student information database, and general education software. The school district simply cannot function without those services. In the longer term, the district will not be able to pay for capital improvement projects such as the replacement of the district's antiquated air conditioners, which were at least partly responsible for mold contamination within the district's school buildings this past autumn.

Thus, the harm in this matter is significant and irreparable.

**II. THE BOARD HAS DEMONSTRATED THAT THE RELIEF REQUESTED IS GROUNDED IN A SETTLED LEGAL RIGHT AND IT HAS A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS.**

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A moving party need not demonstrate with absolute certainty that it will undoubtedly win after a trial on the merits. *Manson, Inc. v. New Jersey Sports & Exposition Auth.*, 971 F. Supp. 875, 883 (D.N.J. 1997). Rather, there only must be a reasonable probability of eventual success. In the present case, the Township's legal obligations to make the timely payments are well-settled.

The law regarding the payment of school taxes to the board of education is outlined in *N.J.S.A.* 54:4-75. The governing body of each municipality must pay the board of education 20% of the school taxes within 40 days of the start of the school year. *Id.* Thereafter, the "balance of the moneys from school tax due for school purposes [shall be paid] in such amounts as may be requested from time to time by the board of education, within thirty days after each request." *Id.* A board may not request any more money than is needed to meet its expenditures for an eight-week period. *Id.*

Based on the statutory language, the tax payment process is rather straight-forward. The municipality collects taxes on behalf of the school district from local residents. Then, 20% of the school taxes are paid within the first 40 days of the school year. *Id.* Thereafter, the board of education submits a number of requests to the municipality for the payment of the remainder amount over the course of the school years. The requests are for the amount needed to meet the board's expenditures over an eight-week period and must be paid by the municipality within 30 days. If the municipality cannot make these payments, it must borrow the money needed to pay the tax liability. *N.J.S.A.* 54:4-76; *see also Robinson v. Cahill*, 119 N.J. Super. 40, 47 (Law. Div.



1972) ("[a] municipality must pay local school taxes when due and must borrow sufficient money, if necessary, to pay such taxes").

Importantly, case law has made it unambiguously clear that a municipality has no ability to withhold or otherwise contest a proper request made by a board of education for its school tax revenue. Instead, the municipality's sole purpose in this process is "purely and only a fiscal collection agent; it has no discretion to decline to remit taxes to [the board of education]." *Twp. of Lebanon v. Cty. of Hunterdon*, HNT-L-290-05, 2005 WL 1791592, at \*2 (Law Div. July 15, 2005).

In fact, even if the municipality believes the board of education does not need the money to meet its expenditures over an eight-week period, it has no authority to withhold or otherwise challenge the board's request for its school tax revenue. *Fair Lawn Bd. of Educ. v. Mayor & Council of Borough of Fair Lawn*, 143 N.J. Super. 259, 271 (Law Div. 1976), *aff'd*, 153 N.J. Super. 480 (App. Div. 1977). In *Fair Lawn Bd. of Educ.*, the board of education submitted a request for the municipality to pay a portion of its school tax revenue. The municipality believed that the school district did not need the funds to meet its expenses over the next two months and therefore refused to pay the board until a detailed financial justification was provided. *Id.* The court held that the municipality's actions were inappropriate and unlawful. *Id.* Instead, the court explained that one of the essential functions of a municipality is to collect tax revenue on behalf of the board of education and the county government. *Id.* Thus, "[t]hese funds, moreover, once collected, are in practical effect trust funds until transmitted ... to the school district pursuant to N.J.S.A. 54:4-75. The municipality is in essence merely the collection agent for the county and the school district of these funds as to which its relationship is basically custodial." *Id.* (emphasis added). The court further made clear that the municipality's obligation

to collect the tax revenue and transfer it to the county and board of education is best described as “ministerial only,’ ‘inflexible,’ ‘imperative,’ ‘unqualified,’ ‘conclusive’ and ‘unequivocal.’” *Id.*

As a result, the court determined that the municipality may not seek any further explanation from the board. *Id.* Instead, once a valid request for payment is made, the municipality must make the payment within 30 days. *Id.*; *see also N.J.S.A. 54:4-75.* Specifically, the court held that it, “construes the import of the eight-week limitation as imposing a restriction upon the board **which is not monitorable by the municipality by way of any mechanism which would result in a late or a reduced payment** of a requisition which, if facially adequate as heretofore defined, is conclusively binding on the municipality for purposes of *N.J.S.A. 54:4-75.*” *Id.* Instead, should the municipality disagree with the Board’s requests for payments its “recourse must be confined to what is essentially the political process.” Therefore, the court concluded that the “submission by the board of a facially adequate requisition ... requesting an amount generally consistent with the school district’s appropriated expenditures is conclusively binding upon the borough for purposes of meeting its mandatory obligations pursuant to *N.J.S.A. 54:4-75.*” *Id.*

Here, the facts are not in dispute. The Board passed a resolution at its April 30, 2018 public meet that approved the municipal tax payment schedule for the 2018-2019 school year. (Cone Cert., ¶2) The schedule includes the following three payments:

December 15, 2018	\$2,349,232.00
January 1, 2019 – Debt Service	\$1,585,053.13
January 15, 2019	\$2,349,232.00

(Cone Cert., ¶2; Exhibit “A”)

This schedule was provided to the Township on May 2, 2018. (Cone Cert., ¶4; Exhibit “B”). Thereafter, the Superintendent provided the Township with monthly letters, which were sent at

least 30 days before each payment, including requests for the December 15, 2018 payment and the January 1, 2019 payments. (Cone Cert., ¶5; Exhibit “C”). The letters each indicated that payments were needed to ensure that the Board has sufficient funds to operate and meet its monthly expenses.

Despite sending the monthly letters, due to Barrett’s financial analysis, the Board requested additional confirmation. Therefore, in a letter dated November 27, 2018, the Board requested that the above three payments be made and sought confirmation from the Township that the payments would be made timely. The Township ignored the Board’s request. (Cone Cert., ¶7; Exhibit “D”). Based on the analysis conducted by its consultant and the Township’s refusal to provide confirmation of payment, it is apparent to the Board that no such payments will be made.

The Township has an absolute obligation and duty to make these payments timely. It may not challenge the amount of payments, nor can it require that the Board drain its surplus to meet its financial obligations. *Fair Lawn Bd. of Educ.*, 143 N.J. Super. at 273. (“the whole purpose of the board's maintenance of a surplus would be defeated if it were required to be expended for regularly budgeted and appropriated purposes. It is thus clear that surplus funds, not being legally available for regular budgeted expenses, could hardly be compelled by the municipality to be used to offset anticipated regular expenditures for purposes of the *N.J.S.A.* 54:4-75 requisition”).

Therefore, the law is well-settled that the Township must remit the requisite payments to the Board. As a result, the Board has a reasonable probability of success on the merits of its claim.

### III. **THE BALANCE OF EQUITIES WEIGHS IN FAVOR OF INJUNCTIVE RELIEF.**

A court must also balance the hardships to the parties in determining whether to grant an injunction. *Crowe*, 90 N.J. at 134. The injunction should be issued if the hardship to plaintiff greatly outweighs the harm to defendant. *See Zoning Bd. of Adjustment v. Service Elec. Cable TV*, 198 N.J. Super. 370, 379 (App. Div. 1985); *J.H. Renarde, Inc. v. Sims*, 312 N.J. Super. 195, 205 (Ch. Div. 1998). The equities here favor issuance of the injunctive relief requested by the Board.

Specifically, if the Township fails to timely make the debt service payment, the Board will default on its loan. This will result in the Board's credit rating being decimated and greatly affect the Board's ability to take out future loans. As a result, the educational services and the Board's long-term objectives will be compromised. In addition, should the Township fail to timely make the December 15<sup>th</sup> and January 15<sup>th</sup> payments, the Board may be unable to pay employee salaries, make short-term emergency repairs and maintenance, and maintain its monthly subscriptions to essential educational resources such as its IEP plan and general student information database.

More importantly, there can be no equitable harm to the Township in making these payments. While the Township may collect the school taxes, the school tax revenue belong to the Board. The Township role is limited to being a "collection agent" that holds the school tax revenue as "trust funds" and transfers them once a request is made by the Board. As a result, there can be no harm to the Township, since its role is limited to transferring the "trust funds" that it has collected on behalf of the Board. *Fair Lawn Bd. of Educ.*, 143 N.J. Super. at 271.

The only potential harm that the Township may allege would arise if it inappropriately spent the school tax revenue to meet its own expenses and now lacks the school tax revenue it

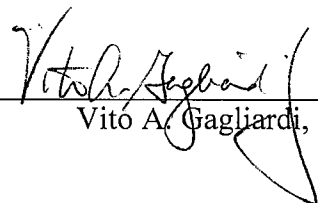
was to hold in “trust.” However, in actuality, no such harm can exist. To start, equity does not permit the Township to create its own hardship by spending the Board’s school tax revenue, and then use its inappropriate conduct to create the hardship. Instead, “*N.J.S.A. 54:4-76* [] requires the municipality to borrow moneys to pay the tax liability, if it does not have sufficient cash in hand.” *Twp. of Lebanon*, 2005 WL 1791592, at \*2. Thus, [n]o excuse is set forth in the statute” for failing to make the timely payment. *Id.* Instead, if the Township lacks the revenue to transfer over the school’s “trust” funds, the law requires that it borrow the money.

As a result, the potential harm to the Board is significant if injunctive relief is not granted, whereas there cannot be any equitable harm to the Township. Therefore, the Board has clearly established that equity weighs in its favor.

### **CONCLUSION**

Based upon the foregoing, the Clinton Township Board of Education respectfully requests that the Court order the Township to timely make the requisite December 15, 2018, January 1, 2019, and January 15, 2019 payments in accordance with *N.J.S.A. 54:4-75*.

**PORZIO, BROMBERG & NEWMAN, P.C.**  
Attorneys for Plaintiff  
Clinton Township Board of Education

By: \_\_\_\_\_  
Vito A. Gagliardi, Jr.

Dated: December 11, 2018

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway

Morristown, NJ 07962-1997

Phone: (973) 538-4006

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David L. Disler, Esq. (068112013)

Thomas J. Reilly, Esq. (245552017)

Attorneys for Plaintiff Clinton Township Board of Education

CLINTON TOWNSHIP BOARD OF  
EDUCATION,

Plaintiff,

v.

TOWNSHIP OF CLINTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON COUNTY  
DOCKET NO.: HNT-L-

CIVIL ACTION

**ORDER**

**THIS MATTER** having been opened to the Court by Porzio, Bromberg & Newman, P.C., attorneys for Plaintiff Clinton Township Board of Education (the “Board”), for an Order compelling Defendant to timely and promptly make the December 15th, January 1st, and January 15th payments, as outlined in Plaintiff’s payment schedule and November 27, 2018 letter, as required pursuant to *N.J.S.A.* 54:4-75; and the Court having read and considered the verified pleadings with exhibits, brief in support, and Defendant Township of Clinton’s (the “Township”) opposition papers, if any, and the Court having heard oral argument on the matter; and good cause having been shown;

**IT IS** on this \_\_\_\_ day of \_\_\_\_\_, 2018,

**ORDERED** as follows:

1. Defendant shall timely make the December 15, 2018, January 1, 2019, and January 15, 2019 payments to Plaintiff, as outlined in Plaintiff’s payment schedule and November 27, 2018 letter.

2. Should Defendants be unable to make said payments by December 15, 2018, January 1, 2019, and/or January 15, 2019, respectfully, Defendants shall borrow the monies necessary, in accordance with *N.J.S.A. 54:4-76*, to timely make the three payments.

3. A copy of the within Order shall be served upon all counsel within \_\_\_\_\_ days from the date of entry.

\_\_\_\_\_, J.S.C.

☐ The court made the attached findings of fact or reasons for its decision on \_\_\_\_\_

☐ The court set forth its findings of fact or reasons for its decision orally on the record on \_\_\_\_\_

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway

Morristown, NJ 07962-1997

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CLINTON TOWNSHIP BOARD OF  
EDUCATION,

Plaintiff,

v.

TOWNSHIP OF CLINTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON COUNTY  
DOCKET NO.: HNT-L-

CIVIL ACTION

**CERTIFICATION OF  
MICHELE CONE**

I, Michele Cone, of full age, hereby certify as follows:

1. I am the Acting Superintendent of Schools of Plaintiff Clinton Township Board of Education. As such, I am fully familiar with the facts set forth herein
2. On April 30, 2018, the Board approved at its public meeting the municipal tax payment schedule for the 2018-19 school year. (A true and accurate copy of the Board's minutes from its April 30, 2018 meeting is attached hereto as Exhibit "A").
3. This schedule was carefully crafted in order to ensure the Board is able to meet the operating expenses set forth in its approved budget.
4. The schedule was provided to the Township on May 2, 2018 (A true and accurate copy of the May 2, 2018 letter sent to the Township is attached hereto as Exhibit "B").
5. In addition, approximately 30 days before each payment, I sent the Township a letter requesting that the payment be made in accordance with the schedule. For example, I sent Mr. Landon, the Township Administrator, a letter dated November 30, 2018 that stated:



As you are aware, the Board approved [] its municipal tax payment schedule for the 2018-2019 school year at its April 30, 2018 meeting. The schedule was prepared to ensure the Board had sufficient funds to operate and meet its monthly expenses. As a result, should the Township fail to make timely payments of the Board's tax monies, the Board will be forced to defer payment on various critical items.

Based upon the approved tax payment schedule, the Board is anticipating receipt of its tax payment by December 15, 2018 in the amount of 2,349,232.00. On behalf of the Clinton Township Board of Education, I respectfully demand that the payment be made timely to avoid the aforementioned crisis.

(True and accurate copies of the two most recent letters are attached hereto as Exhibit "C").

Similar letters were sent to the Township each month, all of which have been ignored.

6. In November 2018, the Board was notified by its financial analyst, John E. Barrett, that based on his most recent assessment of the Township's finances, he believed the Township will have significant difficulties making its scheduled December 2018 and January 2019 payments.

7. As a result of his concerns, the Board sent the Township a letter on November 27, 2018, in which it reminded the Township of its obligations under the payment schedule and demanded that the Township make the December 15<sup>th</sup>, January 1<sup>st</sup>, and January 15<sup>th</sup> payments. The letter further requested the Township provide confirmation no later than December 3, 2018 that payments would be made timely and warned that a failure to respond would result in the Board's request for emergent relief. (A true and accurate copy of the November 27, 2018 letter is attached hereto as Exhibit "D").

8. As of this date, we have received no response to this letter.

9. Based on the Township's lack of response and the conclusions drawn by Mr. Barrett regarding the Township's finances, the Board believes that Township has no intention of meeting its obligations to provide the Board with its tax revenue on the requisite dates.

10. The Township's failure to make the December 2018 and January 2019 payments will have an unthinkable dramatic educational impact on the school district and its students. The Township's failure to make the December 15, 2018 payment may render the Board unable to make scheduled payroll on December 28, 2018, which may leave district employees unable to make rent or mortgage payments, or pay their bills while in the midst of the holiday season.

11. The Township's failure to make the required payments would also leave the school district strapped for money during a time of the year when emergency repairs and required maintenance often accumulate. In particular, the district's boilers used for heating the schools during the winter are antiquated and in need of continued maintenance as well as more large-scale repair and possible replacement. There is also the possibility that the district will have to allocate emergency funds for bursting frozen pipes and other damage that occurs as a result of winter weather.

12. The District also has to put money towards more large-scale projects. The district's sewage treatment plan is currently discharging clean water runoff onto neighboring property and is in imminent need of repair. The air-conditioning units in the district's schools are over 50 years old, and the district's need to replace them became even more imminent after several school buildings were contaminated with mold at the beginning of the school year. Ultimately, the Board hopes that the air-conditioning units can be replaced this coming summer. The Township's failure to provide the required tax payments would put all of these plans in jeopardy.

13. In the immediate future, the lack of payment could potentially cause the Board to default on monthly payments to vendors who render essential educational subscription services. Services such as IEP Direct, which houses the district's essential special education materials;

PowerSchool, which houses detailed information about the entire student body, such as student attendance records and student grades; and Google Apps for Education, which provides a great deal of instructional material that students utilize on a daily basis; could all potentially be shut down. Any such shut down would render the school unable to access its special education platform, student data and contact information, and a large volume of instructional material. This would bring the school district and its ability to educate its students to a grinding halt.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any such statements are willfully false, I am subject to punishment.

  
Michele Cone

Dated: December 11, 2018

# **EXHIBIT A**

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**CLINTON TOWNSHIP SCHOOL DISTRICT  
BOARD OF EDUCATION**

**MINUTES**

**Regular Meeting and Public Budget Hearing April 30, 2018 at 7:30 p.m.  
Clinton Township Middle School Auditorium**

**CALL TO ORDER:** Ms. Grant called the meeting to order at 7:39 p.m.

**PUBLICATION OF NOTICE:**

In accordance with the provisions of the New Jersey Open Public Meetings Act, Chapter 231, Laws of 1975, adequate notice of this meeting was provided through public notice on March 14, 2018.

- a. Faxing to three newspapers designated by the Board – Hunterdon County Democrat, Hunterdon Review and Express Times
- b. Posting on the District Website, the main bulletin board in the Administration Offices and in each Clinton Township School
- c. Faxing to the Clerk of Clinton Township

**ROLL CALL**

**Board Members:**

**Present:** Maria Grant, President  
Rachel McLaughlin, Vice President  
Lana Brennan  
Mary Beth Brooks  
Dr. Jeffrey Foy  
Alissa Olawski  
Yehara Raddalgoda

**Not Present:** Alicia Demmerle  
Kevin Maloy

**Present:** *District Administrators:*  
Dr. Pamela Fiander, Superintendent of Schools  
Mr. Edward F. McManus, Business Administrator/Board Secretary

**Also Present:** Vito Gagliardi, Esq., Board Attorney

**PLEDGE OF ALLEGIANCE:** Dr. Foy led the Board in the Pledge of Allegiance.

**PROCESS GUARDIAN:** Mrs. McLaughlin was appointed Process Guardian.

Dr. Fiander introduced the CTMS trep\$ entrepreneurs who presented their projects. Mrs. Cormican led the students through the presentations. The trep\$ students received a loud round of applause at the conclusion of the program, and Board President Maria Grant thanked commended them for their hard work and impressive results.

# **REPORT OF THE SUPERINTENDENT OF SCHOOLS**

## **Action Items 18-SU-029 through 18-SU-034**

Dr. Fiander presented the following to the Board of Education:

1. Enrollment Report - 1,273
2. Suspension Report
  - (3) - One Day In-School Suspensions - CTMS
  - (1) - One Day Out-of-School Suspension - CTMS
  - (1) - Two Day Out-of-School Suspension - CTMS
  - (1) - Three Day Out-of-School Suspension - CTMS
  - (2) - 1/2 day In-School Suspensions - RVS
  - (2) - One Day In-School Suspensions - RVS
3. Monthly Report
4. QSAC Report
5. Final 2018-2019 Budget Presentation

Dr. Fiander presented the report of the Superintendent including 2018 QSAC results. Based on the review, the district has been placed on the continuum:

○	Instruction and Program	87% (noted that the scores actually equal 90%)
○	Fiscal Management	92%
○	Governance	98%
○	Operations	100%
○	Personnel	100%

*I am pleased to inform you that your district satisfied at least 80% of the weighted indicators in each of the five areas . . . and has been designated as "HIGH PERFORMING." Congratulations on this accomplishment. (Robert L. Bumpus, Assistant Commissioner Field Services)*

She then reviewed the highlights in the district during the month of April, which included, but were not limited to, Take your Child to Work Day, Diversity Night, Superheros Day and the honoring of Mr. Daniello and Mr. Farkas by the PMG students. She then presented the 2018-2019 Clinton Township School Final 2018-2019 Budget.

**Action 18-SU-029:**

***BE IT RESOLVED*** that the Board of Education hereby amends the Suspension Report of the March 19, 2018 meeting to reflect the following additions:

- (2) - One Day In-School Suspensions - CTMS
- (1) - Five Day Out-of-School Suspension - CTMS
- (1) - Four Day Out-of-School Suspension - CTMS

**Action 18-SU-030:**

***BE IT RESOLVED*** that the Board of Education hereby accepts the enrollment and suspension reports of the Superintendent as presented.

**Action 18-SU-031:**

***BE IT RESOLVED*** that the Board of Education hereby affirms the first reading of the Superintendent of School's recommendation for disciplinary consequences and/or remedial actions as required by the State of New Jersey under the Anti-Bullying Rights for the following reports:

- HIB Report Tracking Number 119870
- HIB Report Tracking Number 120169
- HIB Report Tracking Number 120276
- HIB Report Tracking Number 120287
- HIB Report Tracking Number 120304
- HIB Report Tracking Number 120403
- HIB Report Tracking Number 120415
- HIB Report Tracking Number 120528
- HIB Report Tracking Number 120641
- HIB Report Tracking Number 120688
- HIB Report Tracking Number 120865

**Action 18-SU-032:**

***BE IT RESOLVED*** that the Board of Education hereby affirms the second reading of the Superintendent of Schools' recommendation for disciplinary consequences and/or remedial actions as required by the State of New Jersey under the Anti-Bullying Rights for the following reports:

- HIB Report Tracking Number 98849
- HIB Report Tracking Number 99084
- HIB Report Tracking Number 119478
- HIB Report Tracking Number 119670



**Action 18-SU-033:**

***BE IT RESOLVED*** that the Board of Education hereby approves the following proclamation for Staff Appreciation Week:

***WHEREAS***, the week of May 6, 2018 is being recognized as Staff Appreciation Week; and

***WHEREAS***, the Superintendent and Board of Education of Clinton Township are committed to excellence in education and preparation of all of our students with the knowledge, skills and ethics required for responsible citizenship and members of society; and

***WHEREAS***, the Superintendent and Board of Education recognize this goal can only be achieved when all employees acknowledge and accept this mission as their own; and

***WHEREAS***, the Superintendent and Board of Education wish to thank all of the employees of the Clinton Township School District for their individual and collective commitment to the realization of this shared vision for education of our students; and

***WHEREAS***, the Superintendent and Board of Education wish to acknowledge each employee for his or her personal contribution in maintaining a public education system that is a source of local pride; and

***WHEREAS***, it is the expressed request of the Superintendent and Board of Education that this proclamation supports the upcoming Staff Appreciation Week activities at each school as a way to celebrate our success, acknowledge our achievements, and encourage ongoing recognition of the valuable contributions of all employees.

***NOW THEREFORE, BE IT RESOLVED*** that the Superintendent and Board of Education proclaim the week of May 6, 2018 as Staff Appreciation Week for our school district employees.

**Action 18-SU-034:**

***BE IT RESOLVED*** that the Board of Education hereby approves the following proclamation for School Nurse Day:

***WHEREAS***, the more than 3.1 million professional nurses in the U.S. comprise our nation's largest healthcare profession; and

***WHEREAS***, the depth and breadth of the nursing profession meets the diverse and emerging healthcare needs of the American population in a wide range of settings; and

***WHEREAS***, the nursing profession is poised to take a leadership role in all settings to meet the demands of our changing healthcare system; and

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***WHEREAS**, a renewed emphasis on primary and preventive healthcare will require the better utilization of all of our nation's nursing resources; and*

***WHEREAS**, professional nursing has been demonstrated to be an indispensable component in the safety and quality of care delivery; and*

***WHEREAS**, the demand for the cost-effective, safe and quality healthcare services provided by professional nurses will be greater than ever because of the changing demographics of the U.S. population and the increased access to healthcare services; and*

***WHEREAS**, school nurses focus on prevention and well-being for students and families through education regarding healthy lifestyle choices and management of chronic diseases; and*

***WHEREAS**, quality school health services demand school nursing skills and practices based on strong scientific evidence and ongoing education for the health and safety of students; and*

***WHEREAS**, the ongoing efforts of our nurses as they support the students of New Jersey should be recognized;*

***NOW, THEREFORE, BE IT RESOLVED** that the Superintendent and Board of Education proclaim May 9, 2018, School Nurse Day.*

*Motion by Dr. Foy, Seconded by Mrs. Brennan. The Board adopts resolution 18-SU-029 through 18-SU-034 on a roll call vote as follows: ayes 7; nays: 0; abstain: 0; absent: 2.*

#### **PRESIDENT'S COMMENTS/REPORT**

Ms. Grant presented an overview of how the budget was developed. She then reported on the Ad Hoc Feasibility Committee on Closing a School. She stated that Dr. Fiander is working with David Hespe, Former NJ Commissioner of Education, on the various studies being completed. She further stated that there will be a Special Board of Education Meeting on Thursday, May 31, 2018 to hear the findings; ask and respond to questions, and to ultimately vote on the Ad Hoc Committee and Superintendent's recommendation for the fall of 2018.

Ms. Grant provided a status update on negotiations and stated that the Board is eager to begin the mediation process, which is set for May 10, 2018.

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**PUBLIC COMMENTS – AGENDA ITEMS ONLY**

**PLEASE RESPECT THE 3-MINUTE SPEAKING RULE, AS PER BOARD OF EDUCATION BYLAW #0167, SO THAT THE BUSINESS OF THE BOARD MAY PROCEED IN A TIMELY MANNER.**

Mary Clare Spadone, 115 Overlook Drive, urged for the need to speed the negotiations process. She said that not having a settlement brings down morale. She noted that the CTEA was strongly represented at the meeting and does not want the respect for the teachers to diminish.

Chuck Roberto, 8th Grade English Language Arts Teacher and Executive VP of the CTEA, recognized the impact of the high healthcare costs and its impact on the salary guide. He asked why the contract was not settled. He said that he heard the Board of Education negotiator, Phil Stern, say that he was hopeful. Mr. Roberto concluded his remarks by saying “the stage is set, let’s get it done.”

Faith Fuhman, Nurse at Spruce Run School, said that the district has more students registering for kindergarten this year than last year. She appreciated the shared service agreement with the Township for Nursing Services over the summer. She concluded her remarks by mentioning the impact on the budget with regard to the loss of long term staff.

Maureen McSweeney, Foxfire Lane, Clinton Township, said that her issue was transparency. She was concerned about not knowing the negotiations issues. She said that the teachers are valued and committed and concerned that the district is not coming in at cap.

Bill Glaser, 35 Pinehouse Circle, expressed his disappointment that there was no posting of the User Friendly Budget, per pupil spending, or class size. He felt disadvantaged with information.

Debbie Tackie, Clinton Township, said that the district received a high grade for its schools. She said, “Wouldn’t it be in the best interest to have a comparably paid staff?” She also stated the Clinton Township is among the best places to live.

At this time, Board Attorney, Mr. Gagliardi, explained the reason behind the conflict of interest at the last negotiations mediation session, and that it was due to the fact that his law firm represents the district, and the assigned mediator’s wife works at the firm.

**FIRST RECOGNITION OF THE PUBLIC**

**PLEASE RESPECT THE 3-MINUTE SPEAKING RULE, AS PER BOARD OF EDUCATION BYLAW #0167, SO THAT THE BUSINESS OF THE BOARD MAY PROCEED IN A TIMELY MANNER.**

Allison Ford, Clinton Township, thanked Ms. Hammond for the autism shirts.

Maureen McSweeney, Foxfire Lane, inquired about the legal fees and asked that there be a breakdown between Board attorney fees and negotiations attorney fees.

Dr. Fiander read the Staff Appreciation Week and School Nurse Day proclamations..

**REPORT OF THE SCHOOL BUSINESS ADMINISTRATOR/BOARD SECRETARY**

**Action Items 18-BA-034 through 18-BA-037**

**Informational:**

- The date of the Board of Education's next regular meeting is scheduled for Monday, May 14, 2018 at 7:30 p.m., in the Auditorium of Clinton Township Middle School.

**Action 18-BA-034:**

***BE IT RESOLVED** that the Board of Education hereby approves the following Board Meeting minutes and Executive Session minutes for:*

**Minutes**

March 26, 2018

**Executive Session**

March 26, 2018

**Action 18-BA-035:**

***BE IT RESOLVED** that the Board of Education hereby approves the Board Secretary and Treasurer's Reports for the period ending March 31, 2018.*

**Action 18-BA-036:**

***BE IT RESOLVED** that the Board of Education hereby approves the line item transfers for the period ending March 31, 2018.*

**Action 18-BA-037:**

***BE IT RESOLVED** that the Board Secretary, pursuant to N.J.A.C. 6A: 23A-16.10 (c) 3, does hereby certify that as of the date of these reports, no line item account has encumbrances and expenditures which in total exceed the line item appropriation in violation of N.J.A.C. 6A: 23A-16.10 (a);*

***BE IT FURTHER RESOLVED** that the Superintendent of Schools recommends that the Clinton Township Board of Education accept the monthly financial reports of the Secretary and Treasurer of School Monies for the month(s) of March 31, 2018; and further recommends, in*

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*compliance with N.J.A.C. 6A: 23A-16.10 (c) 4, that the Board of Education certifies that no major account has been over-expended in violation of N.J.A.C. 6A: 23A-16.10 (b), and that as of this report sufficient funds are available to meet the district's financial obligations for the remainder of the year.*

*Motion by Dr. Foy, Seconded by Mrs. Brennan. The Board adopts resolution 18-BA-034 through 18-BA-037 on a roll call vote as follows: ayes 7; nays: 0; abstain: 0; absent: 2.*

### **COMMITTEE REPORTS**

#### **FACILITIES/FINANCE:**

**Kevin Maloy- Chair; Alissa Olawski, Maria Grant, Lana Brennan**

**Action Items 18-FF-160 through 18-FF-184**

#### **Action 18 FF-160**

***BE IT RESOLVED*** that the Board of Education hereby approves the payment of bills in the amount of \$2,501,598.97 for the period ending April 30, 2018.

#### **Action 18-FF-161:**

***BE IT RESOLVED*** that the Board of Education hereby approves the following requests for employee/board member travel in accordance with the School District Accountability Act and Board of Education Policy #6471 "School District Travel." Only overnight stays are eligible for meal reimbursement. Mileage, meals, and lodging reimbursements shall be in accordance with NJ Statute, Code and NJ Department of Treasury Guidelines. Where more than five individuals from the district are to attend the same out-of-state conference, the school district shall obtain the prior written approval of the Executive County Superintendent, OMB Mileage Reimbursement Rate: \$0.31.

<b><i>Employee/School</i></b>	<b><i>Program Title/Location</i></b>	<b><i>Date</i></b>	<b><i>Cost</i></b>	<b><i>Mileage</i></b>	<b><i>Lodging/ Meals</i></b>
<i>Lauren Smith Kathleen Collins</i>	<i>NJ Association of School Psychologists Spring Conference</i>	<i>5/11/2018</i>	<i>\$175 each</i>	<i>OMB</i>	<i>N/A</i>
<i>Lauren Welch</i>	<i>NJ Teachers of English to Speakers of Other Languages Spring Conference</i>	<i>5/30/18-5/31/18</i>	<i>\$354</i>	<i>OMB</i>	<i>N/A</i>
<i>Joanne Filus</i>	<i>Digital Citizenship Symposium</i>	<i>5/8/2018</i>	<i>\$195</i>	<i>OMB</i>	<i>N/A</i>
<i>John Mazuca</i>	<i>Carlisle Roofing Application Certification Seminar</i>	<i>5/8/2018-5/10/2018</i>	<i>N/A</i>	<i>OMB</i>	<i>N/A</i>

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Michael Hook	Carlisle Roofing Application Certification Seminar	6/5/2018- 6/7/2018	N/A	OMB	N/A
Kendra Squindo	Beyond Gender Identity and Sexual Orientation	5/10/18	\$150	OMB	N/A
Edward F. McManus	NJASBO Annual Conference Atlantic City, NJ	6/6/18 - 6/8/18	\$275	\$39.37 mileage	\$311.25 Lodging \$128.00 Meals \$6.50 Parking

**Action 18-FF -162:**

***BE IT RESOLVED*** that the Board of Education hereby acknowledges the following requests for graduate course approval, in accordance with the Negotiated Agreement:

<b><i>Employee</i></b>	<b><i>Program Title</i></b>	<b><i>Location</i></b>	<b><i>Date</i></b>
Lisanne Bartram	Building Comprehension in the Primary Grades	Augustana University	Fall 2018
Michele Cone	Data Driven Decision Making	Centenary University	Summer 2018 (18-19 year)
Michele Cone	Dissertation Seminar	Centenary University	Summer 2018 (17-18 year)
Michele Cone	Finance	Centenary University	Summer 2018 (17-18 year)
Eileen Black	Contemporary Curriculum Design and Development	Centenary University	Summer 2018 (18-19 year)
Kimberly Kilroy	Seminar in Research and Application	Centenary University	Fall 2018

**Action 18-FF-163:**

***WHEREAS***, the Alliance For Competitive Energy Services (hereinafter referred to as "ACES"), an alliance composed of the New Jersey School Boards Association (hereinafter referred to as "NJSBA"), the New Jersey Association of School Administrators, and the New Jersey Association of School Business Officials, will from time to time during the Effective Period as defined below solicit bids from electric power suppliers for electric generation services through an energy aggregation program in which NJSBA will act as Lead Agency of the ACES Cooperative Pricing System #E8801-ACESCPS in accordance with the "Public School Contracts Law", N.J.S.A. 18A:18A-1 et seq., and the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA") and the regulations promulgated thereunder; and



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***WHEREAS,** the Clinton Township School District is a Participating Member of the ACES Cooperative Pricing System and is eligible thereby to obtain electric generation services for its own use through one or more contracts to be awarded to electric power suppliers following said bids for electric generation services pursuant to the aggregation program; and*

***WHEREAS,** the Lead Agency will from time to time during the Effective Period (from date of adoption through May, 2023 hereinafter referred to as "Effective Period") issue one or more Requests for Bids for electric generation services on behalf of the ACES Cooperative Pricing System pursuant to the Public School Contracts Law and EDECA; and*

***WHEREAS,** due to significant volatility and the potential for price increases in the wholesale electric market, Participating Members will preauthorize the Lead Agency to award contracts for Electric Generation Service in each service territory to one or more electric power suppliers that submit bids which are reasonably forecasted to provide estimated savings to the Participating Member based upon its previous electric usage and utility provided Basic Generation Service rates; and*

***WHEREAS,** the Lead Agency will only award contracts for said electric generation services to electric power suppliers that submit bids with pricing reasonably estimated to be lower than the utility-provided basic generation service; and*

***WHEREAS,** the District agrees to purchase all electric power needed for its own use (exclusive of on-site electric generation sources) during the Effective Period through any electric power supplier(s) awarded a contract, it being understood that the term of any one contract shall be subject to the provisions of Public School Contracts Law;*

***WHEREAS,** the Lead Agency will notify the Department of Community Affairs' Division of Local Government Services by mail prior to the issuance a Request for Bids for electric generation services, with the understanding that if the Division of Local Government Services does not respond within 10 business days, it will be deemed to have approved the issuance of the Request for Bids or the Request for Rebids.*

***NOW THEREFORE, BE IT RESOLVED** that the District binds itself to the ACES Cooperative Pricing System ##E8801-ACESCPS to purchase all electric power needed for its own use (exclusive of on-site electric generation sources) during the Effective Period from the electric power supplier or suppliers awarded a contract for electric generation services by the Lead Agency; and, be it*

***FURTHER RESOLVED** that the Lead Agency of the ACES Cooperative Pricing System is hereby authorized to execute a master performance agreement that obligates the district to purchase electricity at the terms and conditions stated therein with a third-party supplier or suppliers who have been awarded the contract or contracts by the Lead Agency on behalf of the participating members of the ACES Cooperative Pricing System #E8801-ACESCPS (or any CPS number to be assigned in the future), and provided further that all such contracts shall be at*

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*prices reasonably forecast and estimated by the Lead Agency to provide savings to the Districts relative to the price charged for basic generation service by the electric public utility that would otherwise provide such service; and, be it*

***FURTHER RESOLVED*** that ACES is authorized to continue to bid to obtain electric generation services at any time during the Effective Period on behalf of the ACES Cooperative Pricing System including, for example, a rebid if energy market conditions do not initially lead to a successful bid, on additional dates to be determined by the Lead Agency; and

***FURTHER RESOLVED*** that this Resolution shall take effect immediately upon passage. The authorization provided to the NJSBA pursuant to the Local Public Contracts Laws (N.J.S.A. 40A:11-11(5)), and the Local Public and Public School Contracts Laws Administrative Code (N.J.A.C. 5:34-7.1 et seq.) shall be valid until May, 2023 (the Effective Period) at which time the Cooperative Pricing System will be subject to renewal. Any rescission or expiration of this resolution shall not affect any Agreements entered into prior to such rescission or expiration.

**Action 18-FF-164:**

***WHEREAS***, the Alliance For Competitive Energy Services (hereinafter referred to as "ACES"), an alliance composed of the New Jersey School Boards Association (hereinafter referred to as "NJSBA"), the New Jersey Association of School Administrators, and the New Jersey Association of School Business Officials, will from time to time during the Effective Period as defined below solicit bids from natural gas suppliers for retail natural gas supply services including interstate transportation to the local-natural gas distribution utility company (Natural Gas Supply Services) through an energy aggregation program in which NJSBA will act as Lead Agency of the ACES Cooperative Pricing System #E8801-ACESCPS in accordance with the "Public School Contracts Law", N.J.S.A. 18A:18A-1 et seq., and the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. ("EDECA") and the regulations promulgated thereunder; and

***WHEREAS***, the Clinton Township School District is a Participating member of the ACES Cooperative Pricing System and is eligible thereby to obtain natural gas services for its own use through one or more contracts to be awarded to natural gas suppliers following said bids for natural gas services pursuant to the aggregation program; and

***WHEREAS***, the Lead Agency will from time to time during the Effective Period (from date of adoption through May, 2023, hereinafter referred to as "Effective Period") issue one or more Requests for Bids for natural gas services on behalf of the ACES Cooperative Pricing System pursuant to the Public School Contracts Law and EDECA; and

***WHEREAS***, due to significant volatility and the potential for price increases in the wholesale natural gas market, Participating Members will preauthorize the Lead Agency to award contracts for Natural Gas Supply Service in each service territory to one or more natural gas suppliers that submits bids which are reasonably forecasted to provide estimated savings to the



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*Participating Member based upon its previous natural gas usage and utility provided Basic Gas Supply Service rates; and*

***WHEREAS***, *the Lead Agency will only award contracts for said Natural Gas Supply Services to natural gas suppliers that submit bids with pricing reasonably estimated to be lower than the utility-provided basic gas supply service; and*

***WHEREAS***, *the District agrees to purchase all Natural Gas Supply Services for its own use during the Effective Period through any natural gas supplier(s) awarded a contract, it being understood that the term of any one contract shall be subject to the provisions of Public School Contracts Law; and*

***WHEREAS***, *the Lead Agency will notify the Department of Community Affairs' Division of Local Government Services by mail prior to the issuance a Request for Bids for natural gas supply services, with the understanding that if the Division of Local Government Services does not respond within 10 business days, it will be deemed to have approved the issuance of the Request for Bids or the Request for Rebids.*

*NOW, therefore, be it*

***RESOLVED*** *that the District binds itself to the ACES Cooperative Pricing System ##E8801-ACESCPS to purchase all natural gas supply services needed for its own use during the Effective Period from the natural gas supplier or suppliers awarded a contract for natural Gas supply services by the Lead Agency; and, be it*

***FURTHER RESOLVED*** *that the Lead Agency of the ACES Cooperative Pricing System is hereby authorized to execute a master performance agreement that obligates the district to purchase natural gas at the terms and conditions stated therein with a third-party supplier or suppliers who have been awarded the contract or contracts by the Lead Agency on behalf of the participating members of the ACES Cooperative Pricing System #E8801-ACESCPS (or any CPS number to be assigned in the future), and provided further that all such contracts shall be at prices reasonably forecast and estimated by the Lead Agency to provide savings to the districts relative to the price charged for basic gas supply service by the natural gas public utility that would otherwise provide such service; and, be it*

***FURTHER RESOLVED*** *that ACES is authorized to continue to bid to obtain natural gas services at any time during the Effective Period on behalf of the ACES Cooperative Pricing System including, for example, a rebid if energy market conditions do not initially lead to a successful bid, on additional dates to be determined by the Lead Agency; and*

***FURTHER RESOLVED*** *that this Resolution shall take effect immediately upon passage. The authorization provided to the NJSBA pursuant to the Local Public Contracts Laws (N.J.S.A. 40A:11-11(5)), and the Local Public and Public School Contracts Laws Administrative Code (N.J.A.C. 5:34-7.1 et seq.) shall be valid until May, 2023 (the Effective Period) at which time the Cooperative Pricing System will be subject to renewal. Any rescission of this resolution shall not affect any Agreements entered into prior to such rescission or expiration.*

**Action 18-FF-165:**

**BE IT RESOLVED** that the Board of Education hereby approves a Send/Receive Tuition contract Agreement between the Lebanon Borough School District and the Clinton Township Board of Education for the 2018/19 school year for a total cost of \$526,397.51 as follows:

26 Middle School Students @ \$17,488 ea	\$454,688.00 total
2016/17 tuition adjustments @	\$ 54,221.51 total
	<b>\$508,909.51 Total*</b>

1 Special Education Student @	\$ 17,488 each
	<b>\$ 17,488 Total*</b>

\*Separate contracts for each figure will be issued and signed by both districts.

**Action 18-FF-166:**

**BE IT RESOLVED**, that the Board of Education hereby approves the following resolution to adopt the 2018/19 Budget.

**WHEREAS**, the 2018/19 budget includes sufficient funds to implement the proposed planning process as described in this district's Annual Report pursuant to N.J.S.A. 18A:7A-11 and to provide curriculum and instruction, mandates by the state and necessary safety and security measures, which will enable all students to achieve the New Jersey Learning Standards;

**THEREFORE BE IT RESOLVED**, the Clinton Township Board of Education approves the 2018/19 budget in the amount of \$29,376,655 as follows:

	<b>General Fund</b>	<b>Special Revenues</b>	<b>Debt Service</b>	<b>TOTAL</b>
<b>2018/19 Total Expenditures</b>	\$26,977,817	\$298,732	\$ 2,100,106	<b>\$29,376,655</b>
<b>Less: Anticipated Revenues</b>	\$ 3,485,497	\$298,732	\$ --	<b>\$ 3,784,229</b>
<b>Taxes to be Raised</b>	\$23,492,320		\$2,100,106	<b>\$25,592,426</b>

**BE IT FURTHER RESOLVED**, that the Board of Education hereby approves the operating budget tax levy in the amount of \$23,492,320.

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***WHEREAS**, the Clinton Township Board of Education recognizes school staff and Board members will incur travel expenses related to and within the scope of their current responsibilities and for travel that promotes the delivery of instruction or furthers the efficient operation of the school district; and*

***WHEREAS**, N.J.A.C. 6A:23A-7.3 et seq. requires Board members to receive approval of these expenses by a majority of the full voting membership of the Board, and staff members to receive prior approval of these expenses by the Superintendent of Schools and a majority of the full voting membership of the Board; and a Board of Education may establish, for regular district business travel only, an annual school year threshold of \$1,500 per staff member where prior Board approval shall not be required unless this annual threshold for a staff member is exceeded in a given school year (July 1 through June 30); and*

***WHEREAS**, travel and related expenses not in compliance with N.J.A.A. 6A:23A-7.3 et seq., but deemed by the Board of Education to be necessary and unavoidable as noted on the approved Board of Education Out Of District Travel and Reimbursement Forms; and*

***BE IT FURTHER RESOLVED**, that the Board of Education approves travel and related expense reimbursements in accordance with N.J.A.C. 6A:23A-7.3(b)1, to a maximum expenditure of \$85,000 for all staff and Board members.*

***BE IT FURTHER RESOLVED**, that the Clinton Township Board of Education withdraws \$200,000 from Maintenance Reserve for Maintenance and Repair items in the 2018/19 District Budget.*

**Action 18-FF-167:**

***BE IT RESOLVED** that the Board of Education hereby amends prior motion 18-FF-111 (January 10, 2018) to reflect a change in hourly rates for professional legal services with Porzio, Bromberg and Newman to \$195 per hour for attorney time and \$145 per hour for paralegals.*

**Action 18-FF-168:**

***BE IT RESOLVED** that the Board of Education hereby approves a contract with Phoenix Advisors for the 2018/2019 school year for Continuing Disclosure Agent services and Registered Municipal Advisor of Record appraisal services in the amount of \$850 plus an additional \$200 initial set up fee for new bonds issued.*

**Action 18-FF-169:**

***BE IT RESOLVED** that the Board of Education hereby approves the contract for the 2018/19 School Year with Dr. Frank, School Physician, in the amount of \$3,000.*

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**Action 18-FF-170:**

***BE IT RESOLVED*** that the Board of Education hereby approves the disposal of the following obsolete and/or non-functioning equipment:

*Casio Piano: Serial # R001596M at SRS*

**Action 18-FF-171:**

***BE IT RESOLVED*** that the Board of Education hereby approves an agreement with the Clinton Township Recreation Department to split the cost 50% for the use of the school nurse for the 2017/18 ESY Program (Extended School Year) (June 26, 2018 - July 31, 2018) Monday through Thursday. The Recreation Department will pay the full share for Fridays.

**Action 18-FF-172:**

***BE IT RESOLVED*** that the Board of Education hereby approves, with appreciation, a donation of soil, plants and seeds valued at \$200, from the Shoprite of Clinton. Materials will be used for a Patrick McGaheran School third grade gardening project from the end of April through June, 2018.

**Action 18-FF-173:**

***BE IT RESOLVED***, that the Board of Education hereby approves Dr. Joel Morgan, (Neuropsychology Associates of New Jersey) to administer a Neuropsychological assessment for SID #5634492781 for fee of \$4,500.

**Action 18-FF-174:**

***BE IT RESOLVED***, that the Board of Education hereby approves Hunterdon Medical Center to administer a Neurodevelopmental assessment for SID #4257205281 during the 2018 school year for a fee of \$927.

**Action 18-FF-175:**

***BE IT RESOLVED***, that the Board of Education hereby approves SID #8291912759 to attend Developmental Center for Children & Families (Limitless) 2018 Extended School Year program July 11, 2018 to August 10, 2018 at a tuition rate of \$5,425.00.

**Action 18-FF-176:**

***BE IT RESOLVED***, that the Board of Education hereby approves Developmental Center for Children & Families (Limitless) to supply a personal aide to SID #821912759 during the 2018 Extended School Year program July 11, 2018 to August 10, 2018 at a tuition rate of \$2,295.

**Action 18-FF-177:**

*BE IT RESOLVED, that the Board of Education hereby approves a contract with Meredith Lynar, Licensed Clinical Social Worker, Independent Contractor to consult with teaching staff and provide direct and indirect services for students ages 3-5 at an hourly rate of \$85.00 for the 2017/2018 school year, not to exceed 10 hours. To be paid through the IDEA preschool grant.*

**Action 18-FF-178:**

*BE IT RESOLVED, that the Board of Education hereby approves PESI (Professional Education Services, Inc) to provide home instruction to SID #5109894954 beginning on April 2, 2018 until June 1, 2018; not to exceed 10 hours a week at an hourly rate of \$28.62.*

**Action 18-FF-179:**

*BE IT RESOLVED, that the Board of Education hereby approves Hunterdon Medical Center to administer a Neurodevelopment Assessment for SID #3636446070 during the 2017/2018 school year, for a fee of \$927.00.*

**Action 18-FF-180:**

*BE IT RESOLVED, that the Board of Education hereby approves Frances Matson, LDT/C, Independent Contractor to administer Educational Evaluations at a rate of \$385 per evaluation beginning May 1, 2018 until June 30, 2018.*

**Action 18-FF-181:**

*BE IT RESOLVED, that the Board of Education hereby approves Therapeutic Intervention, Inc to provide Occupational Therapy Services beginning May 1, 2018 until the end of the school year; at an hourly rate of \$91.50, not to exceed 100 hours.*

**Action 18-FF-182:**

*BE IT RESOLVED, that the Board of Education hereby approves Alexander Road Associates to administer a Psychiatric Assessment for SID #8573267839 during the 2017/2018 school year, for a fee of \$595.00.*

**Action 18-FF-183:**

*BE IT RESOLVED, that the Board of Education hereby approves Hunterdon County ESC to provide home instruction to SID #7831029186 beginning May 1, 2018 until the end of the school year, not to exceed 100 hours, for a fee of \$45 per hour.*

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**Action 17-FF-184:**

***BE IT RESOLVED**, that the Board of Education hereby approves the municipal tax payment schedule for the 2018/2019 school year as follows:*

<i>DATE</i>	<i>AMOUNT DUE</i>
<i>July 15, 2018</i>	<i>\$2,349,232.00</i>
<i>August 15, 2018</i>	<i>\$2,349,232.00</i>
<i>September 15, 2018</i>	<i>\$2,349,232.00</i>
<i>October 15, 2018</i>	<i>\$2,349,232.00</i>
<i>November 15, 2018</i>	<i>\$2,349,232.00</i>
<i>December 15, 2018</i>	<i>\$2,349,232.00</i>
<i>January 15, 2019</i>	<i>\$2,349,232.00</i>
<i>February 15, 2019</i>	<i>\$2,349,232.00</i>
<i>March 15, 2019</i>	<i>\$2,349,232.00</i>
<i>April 15, 2019</i>	<i>\$2,349,232.00</i>
<i>TOTAL CURRENT EXPENSE</i>	<i>\$23,492,320.00</i>

<i>DATE</i>	<i>AMOUNT DUE</i>
<i>July 1, 2018 - Debt Service</i>	<i>\$515,053.13</i>
<i>January 1, 2019 - Debt Service</i>	<i>\$1,585,053.13</i>
<i>TOTAL DEBT SERVICE</i>	<i>\$2,100,106.26</i>

Mrs. Grant read the addendum items for Facilities and Finance to include a date change in action FF-177 and the addition of motion FF-184.

*Motion by Mrs. McLaughlin, Seconded by Mrs. Raddalgoda. The Board adopts resolution 18-FF-160 through 18-FF-184 on a roll call vote as follows: ayes 7; nays: 0; abstain: 0; absent: 2.*

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**PERSONNEL NEGOTIATIONS:**

**Personnel:** Alissa Olawski – Chair; Rachel McLaughlin, Maria Grant, Alicia Demmerle  
**Negotiations:** Maria Grant - Chair; Kevin Maloy, Alissa Olawski  
**Action Items 18-PN-233 through 18-PN-248**

**PLEASE NOTE THAT ALL STAFF APPOINTMENTS ARE AT THE RECOMMENDATION OF THE SUPERINTENDENT OF SCHOOLS, AND THAT ALL SALARIES ARE PRORATED TO THE EFFECTIVE DATE OF EMPLOYMENT AND WITHIN THE CURRENT SCHOOL BUDGET.**

**Action 18-PN-233:**

***BE IT RESOLVED** that the Board of Education hereby accepts, with regret, the retirement of Diane Hanley, Payroll Coordinator, effective October 1, 2018.*

**Action 18-PN-234:**

***BE IT RESOLVED** that the Board of Education hereby accepts, with regret, the resignation of Heather Steinhauer, Second Grade Teacher, PMG, effective June 30, 2018.*

**Action 18-PN-235**

***BE IT RESOLVED** that the Board of Education hereby amends prior motion 18-PN-115 (October 22, 2017) from approving a pro-rated stipend to approving the full stipend of \$1,000 for Alternate Route Candidates for the following mentor teacher assignment:*

*Mentor Teacher - Michelle Major  
Novice Teacher – Nicole Spagnuolo*

**Action 18-PN-236:**

***BE IT RESOLVED** that the Board of Education hereby approves **Laura Jaw** to complete summer curriculum work at the specified hourly rate of \$50.27 per hour, not to exceed 30 hours.*

**Action 18-PN-237:**

***BE IT RESOLVED**, that the Board of Education hereby approves **Elizabeth Tracey** to be an aide for SID #1167848269 for the Clinton Township Middle School trip to Dorney Park on May 18, 2018 at a rate of \$18 per hour, not to exceed 15 hours.*

**Action 18-PN-238:**

***BE IT RESOLVED**, that the Board of Education hereby approves **Kelli Portland** to provide home instruction to SID #6939190620 beginning April 9, 2018 until June 30, 2018 year; not to exceed 10 hours a week. To be paid at the specified hourly rate of \$51.27 per hour.*



**Action 18-PN-239:**

*BE IT RESOLVED*, that the Board of Education hereby approves **Angela Dmuchowski** to provide home instruction to SID #6939190620 beginning April 9, 2018 until June 30, 2018; not to exceed 10 hours a week. To be paid at the specified hourly rate of \$41.70 per hour.

**Action 18-PN-240:**

*BE IT RESOLVED*, that the Board of Education hereby approves the employment of **Lisa Saharic** (replacing **D. Hauck**), CTMS .5 Teaching Assistant, Step 0-1, \$9,475 (pro-rated to start date), effective May 1, 2018 through June 30, 2018.

**Action 18-PN-241:**

*BE IT RESOLVED*, that the Board of Education hereby approves the employment of **Nicole Spagnuolo**, RVS 1.0 Maternity Leave Replacement Grade 5 Literacy Support Teacher, Step A, \$52,340, (pro-rated to start date), effective May 22 - May 31, 2018.

**Action 18-PN-242:**

*BE IT RESOLVED*, that the Board of Education hereby approves the employment of **Nicole Spagnuolo**, RVS 1.0 Maternity Leave Replacement Teacher Grade 5 Teacher, Step A, \$52,340, (pro-rated to start date), effective June 1 - June 21, 2018.

**Action 18-PN-243:**

*BE IT RESOLVED*, that the Board of Education hereby amends prior motion 18-PN-228 (March 26, 2018) to reflect a change to the end date for Disability Leave of Absence for **Suzanne Molyneux**, SRS Teaching Assistant, from April 9, 2018 to April 23, 2018.

**Action 18-PN-244:**

*BE IT RESOLVED*, that the Board of Education hereby amends prior motion 18-PN-175 (January 22, 2018) to reflect a change in the start date for Maternity/Disability Leave of Absence for **Christine Wendell**, RVS Teacher, from May 29, 2018 to June 4, 2018.

**Action 18-PN-245:**

*BE IT RESOLVED*, that the Board of Education hereby amends prior motion 18-PN-176 (January 22, 2018) to reflect a change in the start date for Maternity/Disability Leave of Absence for **Lori Zockoff**, RVS Teacher, from May 29, 2018 to May 22, 2018.



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**Action 18-PN-246:**

***BE IT RESOLVED**, that the Board of Education hereby approves the request for a Disability Leave of Absence form **Linda McClurg**, SRS/PMG .5 Nurse, for the period beginning February 26, 2018 (using sick days from February 26, 2018 through April 20, 2018) through on or before May 31, 2018.*

**Action 18-PN-247:**

***BE IT RESOLVED**, that the Board of Education amends prior motion 18-PN-191 (January 22, 2018 - originally listed as self-funded) to approve **Brent Ruge** as the Golf Club Advisor for the 2017/2018 school year to be paid \$530 per the Negotiated Agreement.*

**Action 18-PN-248:**

***BE IT RESOLVED**, that the Board of Education hereby approves the adoption of the job description, A-12.1 - Accounts Payable Coordinator/Administrative Assistant.*

Mrs. Olawski read the addendum items for Personnel and Negotiations to include hourly salary information for PN-238 and PN-239 and a last name change for PN-239.

*Motion by Mrs. Olawski, Seconded by Mrs. Brooks. The Board adopts resolution 18-PN-233 through 18-PN-248 on a roll call vote as follows: ayes 7; nays: 0; abstain: 0; absent: 2.*

**POLICY/CURRICULUM**

**Rachel McLaughlin – Chair; Yehara Raddalgoda, Jeffrey Foy, Mary Beth Brooks**  
**Action Items 18-PC-038 through 18-PC-042**

**Action 18-PC-038:**

***BE IT RESOLVED** that the Board of Education hereby approves the second reading and adoption of the following policies and regulation, as presented to the Board on March 26, 2018 as follows:*

**Policy**

*2431.1 - Athletic Teams-Team Size Guidelines - With an amendment to the minimum size of the basketball team to be eleven (11), instead of twelve (12) players.*

**Action 18-PC-039:**

***BE IT RESOLVED** that the Board of Education hereby amends prior motion 18-PC-022 (November 20, 2017) to reflect a change in date for the Artline 2 field trip from May 11, 2018 to June 4, 2018.*

**Action 18-PC-040:**

***BE IT RESOLVED*** that the Board of Education hereby approves the CAP Grant Application, requesting grant funding in the amount of \$827.40 from the Child Assault Prevention program, with the district responsibility of \$354.60.

**Action 18-PC-041:**

***BE IT RESOLVED*** that the Board of Education hereby approves the following field trip(s) (at board expense):

May 24, 2018	NJ State Bar Foundation	Participating Law Group of 20 6th graders	Ms. Sandorse
May 25, 2018	Move-Up Day @ PMG/RVS	Grades 1 & 3	Ms Goad/Ms. Postma Ms. High
June 8, 2018	Clinton Township MS	6th Grade Resource Room Students & Teacher Recommendations	Ms. Carew

**Action 18-PC-042:**

***BE IT RESOLVED*** that the Board of Education hereby approves the following field trips (costs are funded through outside sources):

May 24, 2018	Echo Hill	PMG – Grade 3 3 classes AM 3 classes PM	Ms. Shea/ Mr. Barton
May 31, 2018	RVCC Planetarium	RVS - Grade 6 Team Omega	Ms. Carew
June 1, 2018	RVCC Planetarium	RVS – Grade 6 Team Alpha	Mr. Kocot
June 11, 2018	Eyes of the Wild (in school field trip)	Kdg	Ms. Ferri

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*Motion by Mrs. McLaughlin, Seconded by Mrs. Raddalgoda. The Board adopts resolution 18-PC-038 through 18-PC-042 on a roll call vote as follows: ayes 7; nays: 0; abstain: 0; absent: 2.*

#### **FEASIBILITY OF SCHOOL CLOSING**

**Maria Grant – Chair; Rachel McLaughlin, Jeff Foy, Mary Beth Brooks**

#### **OLD BUSINESS**

None

#### **NEW BUSINESS**

Mrs. Olawski congratulated the teachers at Patrick McGaheran School for the Spring Concert.

Mrs. McLaughlin expressed appreciation for having students present at each of the CTSD Board of Education meetings, and also expressed interest in having those who will be retiring this year recognized at the May Board Meeting. Mrs. Grant noted that has been scheduled.

#### **SECOND RECOGNITION OF THE PUBLIC**

**PLEASE RESPECT THE 3-MINUTE SPEAKING RULE AS PER BOARD OF EDUCATION BYLAW #0167, SO THAT THE BUSINESS OF THE BOARD MAY PROCEED IN A TIMELY MANNER.**

None

#### **EXECUTIVE SESSION:**

***WHEREAS**, while the Sen. Byron M. Baer Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.) requires all meetings of the Clinton Township Board of Education to be held in public, N.J.S.A. 10:4-12(b) sets forth nine (9) types of matters that may lawfully be discussed in "Executive Session," i.e. without the public being permitted to attend, and*

***WHEREAS**, the Clinton Township Board of Education has determined that the following issues are permitted by N.J.S.A. 10: 4-12(b) to be discussed without the public in attendance and shall be discussed during an Executive Session.*

***WHEREAS**, any pending or anticipated litigation or contract negotiation in which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer. The nature of the matter, described as specifically as possible without undermining the*

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*need for confidentiality reviewing hearing information before the Board pursuant to N.J.S.A. 18A:37-13.2 et. seq., attorney-client privilege, personnel, and negotiations, and;*

***WHEREAS**, the length of the Executive Session is estimated to be sixty (60) minutes after which the meeting shall reconvene and proceed with business.*

***NOW, THEREFORE, BE IT RESOLVED** that the Clinton Township Board of Education will go into Executive Session for only the above stated reasons;*

***BE IT FURTHER RESOLVED** that the Board hereby declares that its discussion of the aforementioned subject will be made public at such time as the reason for confidentiality no longer exists.*

*Action may be taken upon return.*

Time: 9:17 p.m.

*Motion by Dr. Foy, Seconded by Mrs. Olawski. The resolution was adopted on full board consent.*

***BE IT RESOLVED** that the Board of Education hereby approves reconvening the regular Board meeting.*

Time: 10:25 pm

*Motion by Mrs. Raddalgoda, Seconded by Mrs. Brennan. The resolution was adopted on full board consent.*

### **ADJOURNMENT**

#### **Action 18-AJ-014:**

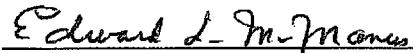
***BE IT RESOLVED** that the Board of Education hereby adjourns this meeting.*

Time: 10:26 p.m.

*Motion by Mrs. McLaughlin, Seconded by Dr. Foy. The resolution was adopted on full board consent.*

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Respectfully Submitted,



Edward F. McManus

Business Administrator/Board Secretary

Minutes Prepared: 5/1/18

Minutes remain unofficial until Board of Education approval.

Board of Education Approved:



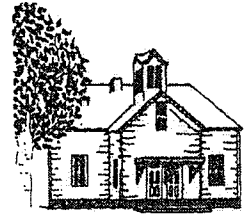
Maria Grant, President

\_\_\_\_\_  
Date

# **EXHIBIT B**

# Clinton Township Board of Education

*"Where Children Come First"*



Dr. Pamela Fiander  
Superintendent of Schools

Edward F. McManus  
School Business Administrator/Board Secretary

May 2, 2018

Mrs. Carla Conner, Municipal Clerk  
Clinton Township Municipal Building  
1225 Route 31 South, Building D  
Lebanon, NJ 08833

**Re: 2018-2019 LOCAL SCHOOL TAX REMITTANCE SCHEDULE**

Dear Mrs. Conner,

Please follow the schedule set forth below for the remittance of the Local School Tax Levy due for the 2018-2019 School Year:

DUE DATE	CURRENT EXPENSE	DEBT SERVICE	TOTAL
July 1, 2018		\$515,053.13	\$515,053.13
July 15, 2018	\$2,349,232.00		\$2,349,232.00
August 15, 2018	\$2,349,232.00		\$2,349,232.00
September 15, 2018	\$2,349,232.00		\$2,349,232.00
October 15, 2018	\$2,349,232.00		\$2,349,232.00
November 15, 2018	\$2,349,232.00		\$2,349,232.00
December 15, 2018	\$2,349,232.00		\$2,349,232.00
January 1, 2019		\$1,585,053.13	\$1,585,053.13
January 15, 2019	\$2,349,232.00		\$2,349,232.00
February 15, 2019	\$2,349,232.00		\$2,349,232.00
March 15, 2019	\$2,349,232.00		\$2,349,232.00
April 15, 2019	\$2,349,232.00		\$2,349,232.00
<b>Grand Totals</b>	<b>\$23,492,320.00</b>	<b>\$2,100,106.26</b>	<b>\$25,592,426.26</b>

Please feel free to call my office if you have any questions or concerns.

Sincerely,

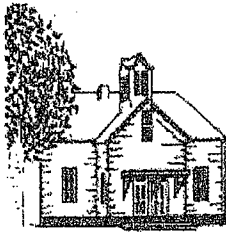
*Edward F. McManus*

Edward F. McManus  
School Business Administrator/  
Board Secretary

P.O. Box 6, Annandale, NJ 08801 • (908) 236-7235 • Fax (908) 236-7645

# **EXHIBIT C**





# Clinton Township School District

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Michele Cone, Superintendent  
P.O. Box 6, Annandale, NJ 08801  
(908) 268-5414

November 30, 2018

VIA E-MAIL

Mr. Jesse Landon  
Township Administrator  
Clinton Township  
1225 Route 31 South  
Lebanon, NJ 08833

**Re: Clinton Township Board of Education – Payment of School District Taxes**

Dear Mr. Landon:

As you are aware, the Board approved at its municipal tax payment schedule for the 2018/2019 school year at its April 30, 2018 meeting. The schedule was prepared to ensure the Board had sufficient funds to operate and meet its monthly expenses. As a result, should the Township fail to make timely payments of the Board's tax monies, the Board will be forced to defer payment on various critical items.

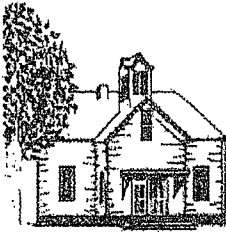
Based upon the approved tax payment schedule, the Board is anticipating receipt of its tax payment by December 15, 2018 in the amount of 2,349,232.00. On behalf of the Clinton Township Board of Education, I respectfully demand that the payment be made timely to avoid the aforementioned crisis.

Sincerely,

A handwritten signature in cursive script that reads "Michele Cone".

Michele Cone, MA  
Superintendent of Schools

cc: Maria Grant, Board President  
Vito A. Gagliardi, Jr., Board Attorney  
Richard Kilpatrick, School Business Administrator/Board Secretary



## Clinton Township School District

---

Michele Cone, Superintendent  
P.O. Box 6, Annandale, NJ 08801  
(908) 268-5414

November 30, 2018

VIA E-MAIL

Mr. Jesse Landon  
Township Administrator  
Clinton Township  
1225 Route 31 South  
Lebanon, NJ 08833

### Re: Clinton Township Board of Education – Payment of Debt Service Obligation

Dear Mr. Landon:

As you are aware, the Board approved at its municipal tax payment schedule for the 2018/2019 school year at its April 30, 2018 meeting. The schedule was prepared to ensure the Board had sufficient funds to operate and meet its monthly expenses and to fulfill its debt service obligations. As a result, should the Township fail to make timely payments of the Board's tax monies, the Board will be forced to defer payment on critical items.

Based upon the approved tax payment schedule, the Board is anticipating receipt of its January DEBT SERVICE PAYMENT by Tuesday, January 1, 2019 in the amount of \$515,053.13. On behalf of the Clinton Township Board of Education, I respectfully demand that the payment be made timely to avoid the Board's deferral of payments and possible default. If the monies are not received, the Board will be forced to take legal action to compel the payments.

Thank you for your prompt attention.

Sincerely,

A handwritten signature in cursive script that reads "Michele Cone".

Michele Cone, MA  
Superintendent of Schools

cc: Maria Grant, Board President  
Vito A. Gagliardi, Jr., Board Attorney  
Richard Kilpatrick, School Business Administrator/Board Secretary

# **EXHIBIT D**

# PORZIO

BROMBERG & NEWMAN P.C.

ATTORNEYS AT LAW

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VITO A. GAGLIARDI, JR.  
MEMBER, NJ BAR  
CERTIFIED BY THE SUPREME COURT OF  
NEW JERSEY AS A CIVIL TRIAL ATTORNEY  
DIRECT DIAL NO.: 973-889-4151  
E-MAIL ADDRESS: VAGAGLIARDI@PBNLAW.COM

November 27, 2018

**VIA E-MAIL AND REGULAR MAIL**

Trishka Cecil, Esq.  
Mason Griffin and Pierson, P.C.  
101 Poor Farm Road  
Princeton, NJ 08540

Re: *Clinton Township Board of Education*  
Our File No.: 001214.032523

Dear Ms. Cecil:

We are counsel to the Clinton Township Board of Education and write to you in your capacity as the attorney for Clinton Township. Unfortunately, despite various attempts, we never heard back from you this past Spring, when we hoped to discuss the proposed tax payments for the 2018-19 school year. In any event, based upon the tax schedule presented to the Township by the Board, the Board should receive its tax payments on the following dates:

December 15, 2018	\$2,349,232.00
January 1, 2018 – Debt Service	\$1,585,053.13
January 15, 2019	\$2,349,232.00

The Board demands that all three payments be made in the amounts and on the dates set forth above. As you are aware, receipt of these payments is crucial to the Board's ability to operate and meet its monthly expenses. By way of example, defaulting on its debt services payment would dramatically impact the Board's ability to borrow money.

The reason for this correspondence is that the consultant our office hired to review the Township's finances -- John E. Barrett of PM Consultants, LLC -- notified our office that he is concerned, based upon his most recent analysis, that the Township will be unable to make these payments in a timely fashion. While the Board sincerely hopes that Mr. Barrett's prediction is incorrect, due to the severe implications of the Board not

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**PORZIO**  
BROMBERG & NEWMAN P.C.

Trishka Cecil, Esq.  
November 27, 2018  
Page 2

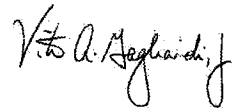
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ATTORNEYS AT LAW

receiving timely payments, the Board requests that the Township provide it with confirmation no later than **December 3, 2018** that the payments will be made on the required dates. Should the Board not receive confirmation, the Board will interpret the Township's silence as an acknowledgment that the payments will not be made timely. In that instance, the Board will be forced to seek emergent relief without further notice.

Thank you for your kind attention to this important matter.

Sincerely,



Vito A. Gagliardi, Jr.

cc: Michele Cone, Superintendent of Schools (via email)  
Maria Grant, Board President (via email)

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway

Morristown, NJ 07962-1997

Phone: (973) 538-4006

Fax: (973) 538-5146

Vito A. Gagliardi, Jr., Esq. (024821989)

David L. Disler, Esq. (068112013)

Thomas J. Reilly, Esq. (245552017)

Attorneys for Plaintiff Clinton Township Board of Education

CLINTON TOWNSHIP BOARD OF  
EDUCATION,

Plaintiff,

v.

TOWNSHIP OF CLINTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON COUNTY  
DOCKET NO.: HNT-L-

CIVIL ACTION

**CERTIFICATION OF  
JOHN E. BARRETT**

I, John E. Barrett, CMFO, CCFO, of full age, hereby certify as follows:

1. I am a Certified Municipal Finance Officer and Certified County Finance Officer presently providing financial consulting services through P.M. Consultants, LLC. Based on my personal knowledge of the facts set forth herein, I submit this certification in support of Plaintiff's Order to Show Cause.

2. I was retained by the attorneys for the Clinton Township Board of Education in the fall of 2016 to analyze Clinton Township's finances and provide recommended solutions to the Township's apparent cash flow problems and difficulties making scheduled school tax payments to the Board. I have continued this analysis up to the present time and am intimately familiar with the state of the Township's finances.

3. One of the major obligations entrusted to municipalities in New Jersey is the collection of taxes on behalf of school districts and county governments. Clinton Township is no exception. When collecting property taxes from its residents, the Township is responsible for

distributing a percentage of this money to the appropriate entity. This obligation is essential to the school district's and county government's ability to function and fulfill their intended purposes.

4. School districts require a predictable amount of cash flow to operate effectively and pay their bills, which include the payment of salaries, benefits, supplies, operational expenses, and debt service payments. To cover these expenses, each year the Board of Education proposes to the Township a payment schedule that corresponds with the school district's monthly costs.

5. The municipality pays the Board out of collected property tax revenue, which the municipality collects on February 1, May 1, August 1, and November 1 of each calendar year. It then holds the tax revenue for the county government and local board of education in "trust," until such time as it is required to turn over the tax revenue to the county and board of education.

6. A municipality can defer up to 50% of the school property tax levy that is collected during the calendar year. Since the Township is on a calendar year budget (January-December) and the Clinton Township School District is on a fiscal year budget cycle (July-June), the Township collects taxes on a calendar year basis, but does not have to pay the school district until their July 1 to June 30 school year calendar. In other words, a municipality can collect school taxes, but does not have to pay them to boards of education right away. This "deferral" of school taxes is accomplished through adoption of a resolution by the municipal governing body.

7. Generally, the Township receives 50% of the school district's tax money on February 1st and May 1st as part of its quarterly property tax collection. However, payment to the school district is not required to begin until July 1. For example, with regard to the 2018-2019 school year, the Board's budget required that \$25.5 million be collected in school tax

revenue (meaning that \$6.4 million was to be collected each quarter). On February 1, 2018 and May 1, 2018 the Township collected approximately \$6.4 million in tax revenue, for a total of around \$12.8 million (i.e., 50% of the total school taxes to be collected). Thus, before the Township had to make any payments to the Board beginning in July 2018, it had \$12.8 million in its bank account.

8. The Township's increasing use of the school district's tax revenue appears to have begun in 2004. In 2004, the Township began spending some of the school district's tax revenue prior to July 1 to help meet its own budgetary demands. Since the Township is unable to make any further collections until August 1 and November 1, money owed to the Board of Education was deferred to a later date when the Township was able to collect additional tax revenue.

9. The main benefit to the Township for deferring school taxes is that the municipal fund balance (surplus) is artificially increased. As of the December 31 municipal year end, the Township considers the "deferred" school taxes as part of the municipal surplus. As of January 1, those taxes are considered a liability due to the school districts. The artificial increase in the municipal fund balance as of the close of the December 31 fiscal years is then utilized to balance the succeeding municipal budgets.

10. For the last 14 years, the amount of tax revenue that has been deferred has consistently risen. While permitted by law, this financial gimmick is little more than manipulative accounting, deficit spending and is not a best practice. It has been criticized by the Division of Local Government Services and credit rating services such as Moody's because it artificially inflates the amount of surplus reported in the Township's budget.

11. The Township has continued to defer additional school taxes and draw down fund balance reserves. By fully "deferring" the school property taxes collected six months in advance



and then utilizing the funds to balance the municipal budget, the Township has essentially spent those funds and must wait until the next property tax due date of February 1 to replace those funds. This creates a continuous cycle of using next year's school property tax levy to pay the current year amounts due.

12. An example of this inappropriate reliance can be seen by looking at the Township's finances at the close of the 2015 calendar year, in which the Township indicated that it had cash on hand of \$1.9 million. A review of the Township's financial records revealed that the Township still owed the local and regional school districts \$19.2 million. In other words, the Township spent \$17.3 million of the school districts' tax revenue to meet its own expenses. This money was then not paid to the school districts until the Township was able to collect additional property taxes at a later date.

13. Essentially, the Township has created an endless cycle in which it has become dependent on the school district's tax revenue to fund its own budget. Payment to the schools is therefore delayed until the Township is able to collect sufficient funds to meet its budgetary deficit. This cycle continues each year and unfortunately the problem has worsened to the point that the Township is no longer able to make its monthly payments to the school district.

14. Moreover, the Township does not "own" the school district's tax revenue; the Township's use of the school tax revenue is essentially a forced, interest-free loan from the school district to the Township. The Township's scheme is essentially like using one credit card to pay off another. It is not sustainable.

15. To get through the 2018 budget year, the Township drew upon most of its surplus of \$966,000. The Township used \$717,000 of those funds to balance its budget, leaving only \$249,228 of surplus available for future use. The Township also budgeted over \$1 million in

non-sustainable revenue, which further erodes its cash reserves, and prospects for the upcoming 2019 budget year.

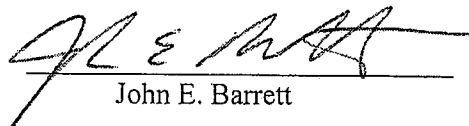
16. As of September 2018, the Township has approximately \$4,950,494 in cash. Essentially, \$3,929,838 of that amount is made up of bond funds borrowed from the Township's General Capital Fund, which cannot be used because it comes from a tax-exempt source. This leaves the Township with a little over \$1 million in operating cash.

17. Based on my review of the budget, it is my opinion that the Township will be unable to make the December and January payments to the Board while still maintaining its current surplus. The Township needs to generate more revenue (by raising taxes) or reduce its costs (by cutting the services it offers). Unfortunately, neither option is popular for the Township's elected officials. Otherwise, the Township must employ tax anticipation notes ("TANs"). TANs allow a local government to borrow money for short periods of time prior to the collection of future tax revenues. They are routinely used by municipalities to provide financial relief in advance of property tax due dates. By issuing TANs, the Township could break its cycle of relying on school district tax revenue to fund its budget by finally having sufficient cash during the fiscal year to meet its financial obligations.

18. At the same time, the result of the school district missing its January 15, 2019 debt service payment would be even more dramatic. The Board has rightfully requested that the Township pay the funds needed to make this payment no later than January 1, 2019, as two weeks are needed in order to ensure that the money that is transferred from the Township clears, which then must be against transferred to the Board's Bond Payment Agent and clear. If the district misses its debt service payment, it will be considered in default, its credit rating would be

destroyed, investors would be greatly discouraged from purchasing its bonds, and it would only be able to receive loans at an exorbitant interest rate.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any such statements are willfully false, I am subject to punishment.



John E. Barrett

Dated: December 11, 2018

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway

Morristown, NJ 07962-1997

Phone: (973) 538-4006

Fax: (973) 538-5146

Vito A. Gagliardi, Jr., Esq. (024821989)

David L. Disler, Esq. (068112013)

Thomas J. Reilly, Esq. (245552017)

Attorneys for Plaintiff Clinton Township Board of Education

CLINTON TOWNSHIP BOARD OF  
EDUCATION,

Plaintiff,

v.

TOWNSHIP OF CLINTON,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON COUNTY  
DOCKET NO.: HNT-L-

CIVIL ACTION

**CERTIFICATION OF  
DAVID L. DISLER, ESQ.**

I, David L. Disler, Esq., of full age, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and an associate at the law firm of Porzio, Bromberg & Newman, P.C. I am counsel for Plaintiff Clinton Township Board of Education (the "Board") and have personal knowledge of the facts in this case. I make this certification in support of the Board's order to show cause.

2. Attached hereto as **Exhibit A** is a true and correct copy of unpublished decision *Twp. of Lebanon v. Cty. of Hunterdon*, HNT-L-290-05, 2005 WL 1791592 (Law Div. July 15, 2005).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
David L. Disler

Dated: December 11, 2018

# **EXHIBIT A**

Township of Lebanon v. County of Hunterdon, Not Reported in A.2d (2005)

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2005 WL 1791592

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Law Division.

TOWNSHIP OF LEBANON

v.

COUNTY OF HUNTERDON and Hunterdon County Board of Chosen Freeholders

No. HNT-L-290-05.

|  
Submitted and Oral Argument Heard July 15, 2005.

|  
Decided July 15, 2005.

Memorandum of Decision on Motion

BUCHSBAUM, J.

\*1 Plaintiff's motion for permission to deposit funds into court pending the outcome of litigation.

Defendant's cross-motion to compel the payment of county taxes.

Opposed

#### *FACTS*

This matter arises out of the County of Hunterdon's (County)((Defendant) refusal to fund Farmland Preservation grants which, plaintiff alleges, it had previously committed to via resolution. George cert. at 3.

On June 22, 2004, Hunterdon County Board of Chosen Freeholders did not approve the applications for the "Skel property" or the "Grossman-Wolf property" for preservation and protection of farmlands. Thereafter, the Hunterdon County Agricultural Development Board (CADB) and the New Jersey State Agricultural Development Committee (SADC) approved both properties for funding and to be restricted for only agricultural purposes.

On February 15, 2005, the first quarter Open Space tax payment in the amount of \$63,212.14 as well as the 2004 added and omitted Open Space tax payment of \$4,291.45 was due from plaintiff to defendant and unpaid.

On May 15, 2005, the second quarter Open Space tax payment in the amount of \$63,212.14 was due from plaintiff to defendant and unpaid.

#### *LEGAL ANALYSIS*

Plaintiff has prepared a check in the amount of \$132,403.78. This amount allegedly constitutes the full amount of outstanding Open Space taxes due defendant. Plaintiff moves for permission to deposit these funds with the Court under R. 4:57-1, pending the outcome of litigation in this matter.

**Township of Lebanon v. County of Hunterdon, Not Reported in A.2d (2005)**

Under *R. 4:57-1*, a party may, upon notice, and by leave of court, deposit with the court any and all sums where part of the relief sought is a judgment for a sum of money or the disposition of a sum of money. Plaintiff argues that while it does not oppose the payment of the tax to defendant, the defendant has not followed its own resolution regarding the Sekel and Grossman-Wolf properties and that there is a legitimate dispute arising from the defendant's failure to provide previously committed funding. Plaintiff further argues that the withholding of these taxes could, in effect, "offset" the claims between the public entities involved.

In opposition, defendants argue that all taxes which are due must be paid directly to the County, regardless of pending litigation. Defendant argues that if this Court were to hold otherwise, any taxpayer could bring suit against a taxing authority and subsequently withhold tax payments during litigation as a means of developing a fund for the payment of a possible verdict.

Under *N.J.S.A. 54:4-74*, there is no discretion regarding the payment of taxes by the municipality to the County. "The governing body of each municipality shall cause to be paid to the treasurer of the county, in four installments, the amount of county taxes required to be assessed and raised in such municipality, on the fifteenth day of the month in which each installment of taxes shall become payable. The amount to be payable as each of the first two installments shall be one-quarter of the total tax finally levied against the municipality for the preceding year, and the amount to be payable for the third and fourth installments shall be the full tax as levied for the current year, less the amount charged as the first and second installments. The amount thus found to be payable as the last two installments shall be divided equally for and as each installment. The governing body of each municipality shall cause to be paid to the county treasurer on December fifteenth of each year all of the taxes required to be assessed and raised by taxation in such taxing district for state school and other state purposes." *N.J.S.A. 54:4-74*.

\*2 Further, *N.J.S.A. 54:4-76* even requires the municipality to borrow moneys to pay the tax liability, if it does not have sufficient cash in hand. No excuse is set forth in the statute.

In *Board of Education of the Borough of Fair Lawn v. Mayor and Council of the Borough of Fair Lawn*, 143 *N.J. Super.* 259 (L.Div.1976)(Pressler, J.C.C./ta), *aff'd o.b.*, 153 *N.J. Super.* 480 (App.Div.1977), the Law Division held, in relation to *N.J.S.A. 54:4-76*, which deals with both County and school taxes, that the mandate requiring payment of taxes imposed a duty which allowed neither any exercise of discretion nor any failure of compliance by municipal officials *for any reason*. *Id.* at 268. As explained further below, it found no basis for any qualification on the obligation to pay.

Further, even the fact that the legality of certain assessments of taxes by the borough is under judicial review is no defense on an application for mandamus to compel the borough to pay over state and county taxes. *Trewin v. Shurts*, 74 *N.J.L.* 200, 202 (Sup.Ct.1907). In addition, a claim that there were illegal obligations incurred by the Board of Freeholders which required the imposition of additional taxes is not a defense for failure to pay state and county taxes. *Shields, County Collector v. Mayor and Council of Paterson*, 55 *N.J.L.* 495, 502 (Sup.Ct.1893). As the court therein stated, per Justice (and previously Governor) Abbet, the County is entitled to the "first fruits" of revenue from tax collections, even if a later offset is due to the municipality from the County and even if it does not have money on hand to cover other obligations.

Clearly a municipality has an absolute duty to remit taxes to the County. The proper avenue to correct an improper tax is not to withhold such taxes but rather to bring suit in court. *Shields, supra*.

Allowing such funds to be deposited in the court, as opposed to being paid directly to the County, would set a precedent that would endanger the regular flow of funds to the county as mandated by statute. The County correctly asserts that allowing conscientious objection to payment of taxes "would create chaos in connection with governmental fiscal affairs". For example, a governing body which disagreed with a school board's choice of repairs would withhold the

**Township of Lebanon v. County of Hunterdon, Not Reported in A.2d (2005)**

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amount of that repair; a town could decide to withhold funds for libraries if it disagreed with the choice of books, etc. Such actions would indeed create chaos.

Thus, both as a matter of sensible intergovernmental fiscal relationships, and as mandated by the statute, *N.J.S.A.* 54:4-74 and 76, this Court finds that Lebanon is purely and only a fiscal collection agent; it has no discretion to decline to remit taxes to the County. *Bd. of Ed. Of Fair Lawn v. Mayor and Council of Fair Law, supra*, the Court disposed of any claim to act independently as follows:

“Thus the municipal budget upon which the annual real property tax rate is based has three distinct components; the amount to be raised for municipal purposes, the amount to be raised for county purposes; and the amount to be raised for school purposes. See, e.g., *N.J.S.A.* 40A:4-12 and 13. As to the county and school moneys to be thus raised, *it is an essential part of the overall scheme that the obligation of the municipality to include these sums in their budgets, to collect them, and to transmit them in accordance with statutory directive, is absolute and unqualified.* These funds, moreover, once collected, are in practical effect trust funds until transmitted to the county pursuant to *N.J.S.A.* 54:4-74 and to the school district pursuant to *N.J.S.A.* 54:4-75. *The municipality is in essence merely the collection agent for the county and the school district of these funds as to which its relationship is basically custodial.* 143 *N.J.Super.* at 268 (emphasis added)

\*3 The court concluded that:

That duty, by way of underscoring of its unconditional character, has been variously described as “ministerial only”, “inflexible”, “imperative”, “unqualified”, “conclusive”, and “unequivocal”. *Id.*

Nonetheless, plaintiff cites *Granduke v. Lembesis*, 256 *N.J.Super.* 546 (App.Div.1992), which permitted the deposit of settlement funds in Courts by an insurance company where liability was at issue since the settlement had not been accepted. However, *Granduke* is distinguishable from the present case. Crucially, statutory payment mandates were not involved in *Granduke*. Nor did payment of settlement proceeds into court threaten the governmental fiscal integrity. *Fair Lawn, supra; Shields, supra*. Moreover, Lebanon's liability to the County for the tax sum of \$132,403.78 is not in dispute. Plaintiff so conceded in its letter brief. Thus, in contrast to *Granduke*, there is no doubt that the tax funds are due to the County.

Further, the funds actually in dispute in the current litigation regard possible payments by the County for the Sekel and Grossman-Wolf properties, not the Open Space tax payments to the County. To allow plaintiff to deposit the tax funds with the Court, thus withholding them from defendant, would allow plaintiff to use those funds to “create a fund to secure the satisfaction of a prospective judgment,” *AC-Berwick Transporters v. Sendell*, 176 *N.J.Super.* 339, 346 (Ch. Div.1980). The Appellate Division specifically rejected such argument in *AC-Berwick Transporters*.

Plaintiff thus can provide no justification for allowing the deposit of tax revenues with the Court pending the outcome of the litigation. This Court finds that the withholding of such funds would set a legally and fiscally untenable precedent. Plaintiff's motion will be denied and defendant's cross-motion will be granted.

**CONCLUSION**

Plaintiff moves to deposit funds with the Court. For the reasons stated above, motion is DENIED.

Defendant cross-moves to compel payment of taxes. For the reasons stated above, motion is GRANTED.



Township of Lebanon v. County of Hunterdon, Not Reported in A.2d (2005)

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**All Citations**

Not Reported in A.2d, 2005 WL 1791592

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End of Document

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