

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Docket No. 87 MAP 2015

Pocono Mountain School District,
Appellant,

v.

**Pennsylvania Department of Education,
Division of Subsidy Data and Administration,**
Appellee.

**BRIEF OF *AMICUS CURIAE*
THE PENNSYLVANIA SCHOOL BOARDS ASSOCIATION
In Support of the Appeal of Appellant the Pocono Mountain School District**

**Appeal from the Order of the Commonwealth Court of Pennsylvania at No. 2052
CD 2014, filed July 8, 2015, affirming the Order of the Pennsylvania Department of
Education, No. EDU-2014-SLAP-000176, entered on October 23, 2014.**

Stuart L. Knade, Esquire
General Counsel
Pa. Attorney I.D. No. 39872
Pennsylvania School Boards Association
400 Bent Creek Boulevard
Mechanicsburg, PA 17050-1873
(717) 506-2450, ext. 3377
Fax (717) 506-2451
stuart.knade@psba.org
Attorney for *Amicus Curiae*
Pennsylvania School Boards Association

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STATEMENT OF INTEREST OF AMICUS CURIAE

Your Amicus Curiae the Pennsylvania School Boards Association ("PSBA") is a voluntary non-profit association whose membership includes all of the 500 local school districts and 29 intermediate units of this Commonwealth, numerous area vocational technical schools and community colleges, and the members of the boards of directors of those public school entities. The mission of the Pennsylvania School Boards Association, organized in 1895 and the first such association in the Nation, is to promote excellence in school board governance through leadership, service and advocacy for public education. The efforts of PSBA in assisting local school entities and representing the interests of effective and efficient governance of our public schools also benefit taxpayers and the general public interest in education of our youth.

In that capacity, PSBA endeavors to assist state and federal courts in selected cases presenting important legal issues of statewide or national significance, by offering benefit of the Association's statewide and national perspective, experience and analysis relative to the legal, policy, management, liability, fiscal, ethical and other considerations, ramifications and consequences that should inform any resolution of the particular disputed issues in such cases. For decades, PSBA's informed insight, thorough research and careful legal

analysis have made the Association a respected and valued participant in state and federal appellate proceedings involving public schools.

PSBA files this amicus curiae brief pursuant to Pa.R.A.P. 531, in order to offer the Court PSBA's perspective about why it would be contrary to legislative intent and the rules of statutory construction to uphold the decision of the Commonwealth Court in this case. This brief is offered in support of the positions of the Appellant Pocono Mountain School District, and urges that the decision of the Commonwealth Court in this case be reversed.

STATEMENT OF CONCURRENCE IN PRELIMINARY MATTERS

Your *Amicus Curiae*, PSBA, concurs in such statements as are made in the brief of Appellee Pocono Mountain School District regarding Jurisdiction, the Order or Other Determination in Question, Scope and Standard Of Review, Questions Involved and Statement of the Case.

SUMMARY OF ARGUMENT

The Commonwealth Court first in failing to attempt to harmonize provisions of different statutes that at first examination appear to dictate contrary results. The Public School Employees' Retirement Code requires that in certain circumstances unpaid employer contributions due from charter schools be paid via interception of subsidy payments otherwise due to the chartering school district, while the Charter School Law, in no less than three places, stresses that school districts shall not be liable for debts, liabilities or other obligations of charter schools. These provisions can in reality be harmonized and given intended effect if the Retirement Code provision is construed to allow or require subsidy intercept only if and to the extent that there are amounts due to be paid from the chartering school district to the charter school, against which the intercepted subsidy amounts can be offset.

Inexplicably, the Commonwealth Court not only made no attempt to harmonize or otherwise discuss the provisions of the Charter School Law shielding school districts from responsibility for obligations of charter schools, the opinion of the Commonwealth Court makes no mention of those provisions whatsoever.

It is only if such apparently conflicting provisions of statute cannot be harmonized and both given effect that it becomes necessary to apply the rules of statutory construction for choosing among irreconcilable statutory provisions. But even in that case, the particular controls general, and if neither is more particular,

the most recently enacted controls. Both rules dictate that in the case of a charter school that has ceased operation, and to which nothing is owed to the charter school by a school district, the subsidy intercept provision of the Retirement Code must yield to the protective provisions of the Charter School Law.

ARGUMENT

THE COMMONWEALTH COURT FAILED TO CARRY OUT ITS DUTY TO CONSTRUE STATUTORY PROVISIONS AT FIRST APPEARING TO BE IN CONFLICT TOGETHER IF POSSIBLE, HARMONIZING SUCH PROVISIONS SO THAT EACH CAN BE GIVEN ITS INTENDED EFFECT.

The decisions of the Commonwealth Court and Department of Education were entirely based on a provision of the Public Employees Retirement Code, 24 Pa.C.S. §8101 et seq., which establishes a subsidy intercept mechanism intended to divert state education funding otherwise being paid to a school district, and cause them instead to be paid into the Public Employees' Retirement System (PSERS) on account of unpaid employer retirement contributions owed by the charter school to the System. The provision is premised on the assumption that the subsidy reductions will be offset by amounts the school district owes to the charter schools on account of tuition for students residing in the district. That provision of the Retirement Code states in relevant part as follows:

24 Pa.C.S. §8327. Payments by employers

(a) General rule.--Each employer, including the Commonwealth as employer of employees of the Department of Education, State-owned colleges and universities, Thaddeus Stevens College of Technology, Western Pennsylvania School for the Deaf, Scotland School for Veterans' Children, and the Pennsylvania State University, shall make payments to the fund each quarter in an amount equal to one-half the sum of the percentages, as determined under section 8328 (relating to actuarial cost method), applied to the total compensation during the pay periods in the preceding quarter of all its employees who were members of the system during such period, including

members on activated military service leave. In the event a member on activated military service leave does not return to service for the necessary time or receives an undesirable, bad conduct or dishonorable discharge or does not elect to receive credit for activated military service under section 8302(b.1)(3) (relating to credited school service), the contributions made by the employer on behalf of such member shall be returned with valuation interest upon application by the employer.

(b) Deduction from appropriations.--

(1) To facilitate the payment of amounts due from any employer to the fund through the State Treasurer and to permit the exchange of credits between the State Treasurer and any employer, the Secretary of Education and the State Treasurer shall cause to be deducted and paid into the fund from the amount of any moneys due to any employer on account of any appropriation for schools or other purposes amounts equal to the employer and pickup contributions which an employer is required to pay to the fund, as certified by the board, and as remains unpaid on the date such appropriations would otherwise be paid to the employer. Such amount shall be credited to the appropriate accounts in the fund.

(2) To facilitate the payments of amounts due from any charter school, as defined in Article XVII-A of the act of March 10, 1949 (P.L. 30, No. 14), known as the Public School Code of 1949,1 to the fund through the State Treasurer and to permit the exchange of credits between the State Treasurer and any employer, the Secretary of Education and the State Treasurer shall cause to be deducted and paid into the fund from any funds appropriated to the Department of Education for basic education of the chartering school district of a charter school and public school employees' retirement contributions amounts equal to the employer and pickup contributions which a charter school is required to pay to the fund, as certified by the board, and as remains unpaid on the date such appropriations would otherwise be paid to the chartering school district or charter school. Such amounts shall be credited to the appropriate accounts in the fund. Any reduction in payments to a chartering school district made pursuant to this section shall be deducted from the amount due to the charter school district pursuant to the Public School Code of 1949.

24 Pa.C.S. §8327 (*emphasis in italics added*)

The language italicized in the quote above was added to the Retirement Code by the Act of May 17, 2001, P.L. 26, No. 9, § 2, nearly four years after Pennsylvania's Charter School Law was enacted via the Act of June 19, 1997, P.L. 225, No. 22, § 1 (adding Article XVII-A, 24 P.S. §17-1701-A et seq. to the Public School Code of 1949, Act of March 10, 1949, P.L. 30, No. 14, 24 P.S. §1-101 et seq.). The italicized language in the quote above from the Retirement Code was applied by the Department of Education and the Commonwealth Court in this case to require that the Pocono Mountain School District suffer subsidy deductions on account of amounts owed to PSERS by the Pocono Mountain Charter School despite the fact that the charter school had ceased operating and there were no amounts due from the school district to the charter school against which to offset the deductions.

The problem this appeal places before this Honorable Court, however, is that the Charter School Law in three separate places stresses that school districts shall not be liable for debts, liabilities or other obligations of charter schools. These three provisions state in pertinent part as follows:

24 P.S. §17-1714-A. Powers of charter schools

(a) A charter school established under this act is a body corporate and shall have all powers necessary or desirable for carrying out its charter, including, but not limited to, the power to:

* * *

(c) Any indebtedness incurred by a charter school in the exercise of the powers specified in this section shall not impose any liability or legal obligation upon a school entity or upon the Commonwealth.

24 P.S. §17-1714-A (*emphasis in italics added*).

24 P.S. § 17-1727-A. Tort liability

For purposes of tort liability, employees of the charter school shall be considered public employees and the board of trustees shall be considered the public employer in the same manner as political subdivisions and local agencies. The board of trustees of a charter school and the charter school shall be solely liable for any and all damages of any kind resulting from any legal challenge involving the operation of a charter school. *Notwithstanding this requirement, the local board of directors of a school entity shall not be held liable for any activity or operation related to the program of the charter school.*

24 P.S. §17-1727-A (*emphasis in italics added*).

24 P.S. §17-1729-A. Causes for nonrenewal or termination

(a) During the term of the charter or at the end of the term of the charter, the local board of school directors may choose to revoke or not to renew the charter based on any of the following:

* * *

(i) *When a charter is revoked, not renewed, forfeited, surrendered or otherwise ceases to operate, the charter school shall be dissolved. After the disposition of any liabilities and obligations of the charter school, any remaining assets of the charter school, both real and personal, shall be distributed on a proportional basis to the school entities with students enrolled in the charter school for the last full or partial school year of the charter school. In no event shall such school entities or the Commonwealth be liable for any outstanding liabilities or obligations of the charter school.*

* * *

24 P.S. §17-1729-A (*emphasis in italics added*).

The italicized language in the quote from Section 17-1727-A above appeared in that section as originally enacted in 1997. However, the italicized

language in the quotes from Sections 17-1714-A and 17-1729-A was added by the Act of July 4, 2004, P.L. 536, No. 70, § 19, more than three years after paragraph (b)(2) was added to Section 8327 of the Retirement Code.

Thus on one hand, the General Assembly has taken great pains to emphasize in the Charter School Law that under no circumstances shall school districts be held responsible for the debts, liabilities or obligations of the charter schools with which they interact, while on the other hand the Retirement Code appears at first glance to require something to the contrary.

The Commonwealth Court erred first in failing to attempt to harmonize these provisions if at all possible, rather than applying only the subsidy intercept provision of the Retirement Code relating to charter schools. Inexplicably, the Commonwealth Court not only offered no reasoning as to why the Charter School Law provisions shielding school districts from responsibility for obligations of charter schools should yield to the Retirement Code subsidy intercept process, the opinion of the court below makes no mention of the Charter School Law provisions whatsoever.

Your *amicus curiae* the Pennsylvania School Boards Association submits that harmonizing these provisions so that the intended effect can be given to both is not difficult. Indeed, had the Commonwealth Court acknowledged that there were potentially conflicting statutory provisions leading to a result contrary to what the

Retirement Code can otherwise be read to require, it would have been the Court's first duty to attempt to give effect to all.

Pennsylvania's Statutory Construction Act of 1972 dictates that different statutes that relate to the same things or class of things, and thus are *in pari materia*, are to be construed together whenever possible as one statute, so that all may be given effect. 1 Pa.C.S. §1932; see, *Cozzone ex rel. Cozzone v. W.C.A.B. (Pa Mun./E. Goshen Twp.)*, 621 Pa. 23, 39-40, 73 A.3d 526, 536 (2013) (“Thus, as a fundamental principle, where two parts of a statute relate to the same persons or things, those statutory parts are to be construed and considered concurrently, whenever possible. They are not to be construed as if one part operates to nullify, exclude or cancel the other, unless the statute expressly says so.”). The Statutory Construction Act further provides as follows:

§ 1933. Particular controls general

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S. §1933.

With respect to the dispute now before this Court, the relevant provision appearing in the Charter School Law at §17-1729(i) is the more specific provision,

applying to the particular situation where a charter school has ceased operating entirely. Section 8327 of the Retirement Code is comparatively more general, applying to unpaid employer contributions owed by charter schools whenever they might occur.

“It is an established principle of . . . construction that, where a conflict exists between a specific . . . provision which is applicable to a particular case and certain general provisions which, were it not for such conflict, might apply, the specific provision will prevail.” *Cali v. Philadelphia*, 406 Pa. 290, 300, 177 A.2d 824, 829 (1962)(quoted with approval in *Appeal of Yerger*, 460 Pa. 537 at 542, 333 A.2d 902 at 905 (1975)).

Other provisions of the Statutory Construction Act also are pertinent to the analysis at hand, including that the General Assembly is presumed to intend that all provisions of statute be given effect, 1 Pa.C.S. §1922, and that “[w]henver the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail.” 1 Pa.C.S. §1936.

Applying these canons of statutory construction to the dispute at hand, the Retirement Code and Charter School Law can be construed together and all given effect if the Retirement Code provision is construed to allow or require subsidy intercept *only if and to the extent* that there are amounts due to be paid from the

chartering school district to the charter schools against which the intercepted subsidy amounts can be offset.

Indeed, the mandatory language of the Retirement Code provision itself indicates that such a construction was intended. Section 8327 contains more than one mandate. In addition to mandating that the subsidy intercept occur when employer contributions owed to the system remain unpaid, in its final sentence it further mandates that “[a]ny reduction in payments to a chartering school district made pursuant to this section *shall* be deducted from the amount due to the charter school district pursuant to the Public School Code of 1949.” 24 Pa.C.S. §8327(b)(2)(*emphasis in italics added*).

That final mandate of Section 8327 cannot be fulfilled when there are no such funds due to the charter school, or when the amount of funds due is insufficient to offset the reduction in subsidy to the school district, unless that final sentence is construed as a limit on the amount of any subsidy reduction, capping any intercept to the amount of money the school district owes to the charter school. The final sentence of Section 8327 also is a clear indicator of the General Assembly’s intent that Section 8327 operate only as a collection mechanism rerouting funds that would otherwise be paid by the school district to the defaulting charter school employer, as a consequence of which the school district is to suffer no net loss.

Section 8327, read in its entirety, cannot be construed instead as setting up school districts as a guarantor alternative funding source for the retirement system, with the intent that the school district could be left holding the proverbial bag. Should any doubt about that remain, the later-enacted provisions of the Charter School Law protecting school districts from being held responsible for the debts and obligations of a charter school sweep any such doubt away, or in the alternative, operate as an exception to what the Retirement Code might otherwise be construed to require.

CONCLUSION

For the foregoing reasons, as well as those set forth in the brief of the Pocono Mountain School District, the decisions of the Pennsylvania Commonwealth Court and the Department of Education should be reversed.

Respectfully submitted,



Stuart L. Knade, Esquire
General Counsel
Pa. Attorney I.D. No. 39872
Pennsylvania School Boards
Association
400 Bent creek Boulevard
Mechanicsburg, PA 17050-1873
(717)506-2450, Ext. 3377
FAX (717)506-2451
stuart.knade@psba.org

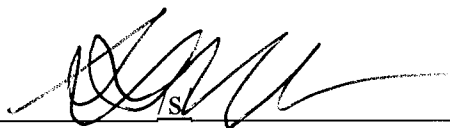
Attorney for *Amicus Curiae*
Pennsylvania School Boards
Association

CERTIFICATE OF SERVICE

I, Stuart L. Knade, do hereby certify that I served two true and correct copies of the foregoing Brief of *Amicus Curiae*, the Pennsylvania School Boards Association, by first class mail, this 8th day of February, 2016, upon each of the following:

Ellen C. Schurdak, Esq.
John Edward Freund, III, Esq.
King, Spry, Herman, Freund & Faul, LLC
1 W. Broad St., Ste. 700
Bethlehem, PA 18018-5783
(610) 332-0390
Attorneys for Appellant
Pocono Mountain School District

Karen S. Feuchtenberger, Esq.
Pennsylvania Department of Education
333 Market St., 9th Floor
Harrisburg, PA 17101-2215
(717) 787-5500
Attorney for Appellee



Stuart L. Knade, Esquire
General Counsel
Pa. Attorney I.D. No. 39872
Pennsylvania School Boards Association
400 Bent Creek Boulevard
Mechanicsburg, PA 17050-1873
(717) 506-2450, ext. 3377 Fax (717) 506-2451
stuart.knade@psba.org
Attorney for Amicus Curiae
Pennsylvania School Boards Association