IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Armstrong School District, Appellant	:	
v.	:	
Armstrong County Board of Elections	:	No. 697 C.D. 2011
	:	Submitted: April 29, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI Filed: May 3, 2011

Armstrong School District (District) appeals from the order of the Court of Common Pleas of Armstrong County (trial court) denying its motion for a preliminary injunction directing the Armstrong County Board of Elections (Board of Elections) to place its referendum question on the May 17, 2011 primary election ballot authorizing the incurring of electoral debt. Because the Board of Elections had no discretion in the matter, we reverse.

The facts of this case are not in dispute. For the past several years, the Armstrong School Board (School Board) considered various options to ensure that the District had adequate school buildings. The options included the possibility of closing or renovating certain schools or constructing a new comprehensive high school somewhere within the District. After studying the issue and conducting

public hearings, the School Board voted in 2009 to close Elderton High School. However, in December 2009, the composition of the School Board changed and the new School Board reversed this decision. The new School Board then voted to borrow over $80 million to renovate the District's high schools, including Elderton. After borrowing the funds but before any contract bids were solicited for the projects, the Pennsylvania Department of Education halted the project pending further study and public input, and this halt remains in effect today.

In response, the School Board adopted a "desire resolution" pursuant to Section 8041(a) of the Local Government Unit Debt Act (Debt Act)[1] to place the following referendum question on the May 17, 2011 primary election ballot:

> Shall debt in the combined sum of One Hundred Fifty Five ($155,000,000) Million Dollars for the purpose of financing the construction of (i) a new comprehensive junior/senior high school building, and (ii) an Elderton K-6 building be authorized to be incurred as, or (as appropriate) transferred from nonelectoral debt to, debt approved by the electors?

[1] 53 Pa. C.S. §8041(a). That section provides as follows:

> Whenever the governing body of any local government unit shall determine that it is advisable to make an increase in the debt of the local government unit with the assent of the electors, or to obtain the assent of the electors to transfer any debt previously incurred without the approval of the electors to electoral debt, it shall adopt a resolution signifying that determination, calling an election for the purpose of obtaining the assent and approving the content and substantial form of notice of election.

The District submitted the desire resolution to the Board of Elections. While the Board of Elections found the resolution to be proper in form, it denied the District's request to place the referendum question on the ballot because, *inter alia*, the resolution did not state that the District deemed it advisable to make an increase in the debt or to transfer nonelectoral debt to electoral debt; the proposed question did not satisfy the stated purpose of the resolution; and none of the School Board directors had actually proposed borrowing $155,000,000 or constructing a centralized school.

The District then filed a complaint with the trial court requesting declaratory and injunctive relief. Specifically, the complaint alleged that the Pennsylvania Department of Community and Economic Development (Department) had exclusive authority to determine whether the proceedings for incurring debt were in conformity with the Pennsylvania Constitution and the Debt Act. According to the District, the function of the Board of Elections was purely ministerial and the Board of Elections exceeded its authority and violated the Debt Act by substantively evaluating the referendum question and refusing to place it on the primary ballot. The District requested a declaration that the referendum question was proper under both the Debt Act and the Pennsylvania Election Code, as well as an injunction to prevent the Board of Elections from refusing to place the referendum question on the primary ballot. The District then filed a motion for preliminary injunction, which the Board of Elections opposed, and a hearing and argument were held before the trial court.

The trial court denied the District's motion for a preliminary injunction[2] because its right to relief was not clear and it failed to prove it would suffer irreparable harm if the injunction was not granted. The trial court noted that the District had other recourse because, pursuant to Section 8041(b) of the Debt Act, a special election could be held at any time for voter consideration of the referendum question. Finally, the trial court stated that it considered it inappropriate to grant a preliminary injunction where the relief that would be granted was the same as the final relief sought by the District. This appeal followed.[3]

On appeal, the District contends that the trial court erred in not granting a preliminary injunction because the District showed that it did have a clear right to relief as the Board of Elections did not have jurisdiction to refuse to place on the ballot a referendum authorized by the Debt Act. Pursuant to Section 8041(a) of the Debt Act, the determination of whether or not it is advisable to

[2] A party seeking a preliminary injunction must show the following: that an injunction is necessary to prevent immediate and irreparable harm; that greater injury would result from refusing the injunction than from granting it; that a preliminary injunction will restore the parties to the status quo; that their right to relief is clear; that they are likely to prevail on the merits; that the injunction will abate the offending activity; and that the preliminary injunction will not adversely affect the public interest. *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 828 A.2d 995 (2003).

[3] This Court's standard of review of a trial court's order granting or denying a request for preliminary injunctive relief is limited to determining whether the trial court had any reasonable grounds for its findings and whether the trial court's application of the law is palpably erroneous or misapplied. *City of Reading v. Firetree, Ltd.*, 984 A.2d 16 (Pa. Cmwlth. 2009). While we have reviewed this case under this scope of review because what is before us is the denial of a preliminary injunction, we would note that mandamus may have been a more appropriate remedy.

make an increase in the debt of the local government shall be made by the governing body, which, in this case, is the District. Under the Debt Act, the Department is charged with ratifying, validating and confirming the proceedings involving the incurring of debt. 53 Pa. C.S. §8209(a). Most pertinent, though, is Section 8211 of the Debt Act which states:

> The [D]epartment has *exclusive jurisdiction* to hear and determine all procedural and substantive matters arising from the proceedings of a local government unit taken under this subpart, including the regularity of the proceedings, the validity of the bonds, notes, tax anticipation notes or other obligations of the local government unit and the legality of the purpose for which the obligations are to be issued.

53 Pa. C.S. §8211(d). (Emphasis added). Applying this provision, in *O'Hare v. County of Northampton*, 782 A.2d 7 (Pa. Cmwlth. 2001), we held that the Department had exclusive original jurisdiction when a county bond ordinance was challenged as vague because it was impossible to ascertain Northampton County Council's intent with certainty. A taxpayer or local government unit wishing to challenge procedural or substantive matters regarding a desire resolution must file a complaint with the Department. 53 Pa. C.S. §8211(b).

Moreover, because the Department has been given the exclusive power to adjudicate challenges, the Board has no jurisdiction over whether a desire resolution meets the standards required by the Debt Act.[4] A County Board of

[4] The Board's first reason for rejecting the referendum is that the desire resolution failed to meet the requirements of Section 8041(a) of the Debt Act because it did not state that the **(Footnote continued on next page…)**

Elections has only those powers expressly granted to it by the Legislature. *Hempfield School District v. Election Board of Lancaster County*, 574 A.2d 1190 (Pa. Cmwlth. 1990). The only time the Board of Elections is even mentioned in the Debt Act is in Section 8043, which states:

> (a) Certification of resolution and question. – The governing body, at least 45 days before any election called pursuant to section 8041 (relating to desire resolution and expense of certain elections) shall cause to be certified to the county board of elections of each county in which the election is to be held a copy of the desire resolution and the form of the question to be submitted to the electors.

53 Pa. C.S. §8043(a). Nothing in that provision gives the Board of Elections discretionary power to make a determination of the propriety of the referendum or the procedures used. Given all of the above, the District had a clear right to relief to have the referendum question placed on the May 17, 2011 primary election ballot.

(continued…)

District deemed it advisable that it should make an increase in the debt or to transfer nonelectoral debt to electoral debt. However, while the Department has exclusive jurisdiction to determine the propriety of the resolution and the ballot question, we note the language of the desire resolution submitted to the School Board by the District proves that the District has determined that it is advisable to do so. With the same caveat, the content of the question appears to substantially conform to Section 8042(b)(5) of the Debt Act, which states that the question shall be in the following form: "Shall debt in the sum of (insert amount) dollars for the purpose of financing (insert brief description of project) be (authorized to be incurred as) (transferred from nonelectoral debt to) debt approved by the electors?" 53 Pa. C.S. §8042(b)(5).

Regarding whether the District made out irreparable harm, the trial court stated that even if the referendum question was not placed on the May 17, 2011 primary ballot, the District had other recourse and, therefore, would not suffer irreparable harm. The trial court pointed to Section 8041(b) of the Debt Act,[1] which provides that the District may fix a date for a special election for the purpose of a desire resolution. Ignoring that the District would have to pay the expenses of a special election, the fact that the Board of Elections violated the Debt Act by exceeding its authority and refusing to put the referendum question on the ballot negates this argument. Where conduct is at variance with a statute, the conduct is injurious to the public. *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947); *Philips Brothers Electrical Contractors, Inc. v. Valley Forge Sewer Authority*, 999 A.2d 652 (Pa. Cmwlth. 2010). Because the Board of Elections violated the Debt Act by refusing to place the referendum question on the ballot, the District's right to relief is clear and it will suffer irreparable harm absent the granting of the preliminary injunction.

Because the District has a clear right to relief and will suffer irreparable harm, the trial court did not have reasonable grounds for denying the District's motion for a preliminary injunction, and the motion to place the referendum on the ballot should have been granted. Accordingly, the order of the trial court is reversed.

DAN PELLEGRINI, JUDGE

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O R D E R

AND NOW, this 3rd day of May, 2011, the order of the Court of Common Pleas of Armstrong County, dated April 19, 2011, and docketed at No. 2011 – 0557 – CIVIL, is hereby reversed.

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DAN PELLEGRINI, JUDGE