

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

ARTHUR ALAN WOLK

vs.

THE SCHOOL DISTRICT OF LOWER MERION

NO. 2016-01839

COVER SHEET OF MOVING PARTY

Date of Filing February 25 2016

Moving Party THE SCHOOL DISTRICT OF LOWER MERION

Counsel for Moving Party MICHAEL D KRISTOFCC, Esq., ID: 73148

Document Filed (Specify) PRELIMINARY OBJECTIONS TO THE COMPLAINT

Matter is (Check One) (Appealable) (Interlocutory)
Oral Argument (Yes) (No) Discovery Needed (Yes) (No)

CERTIFICATIONS - Check ONLY if appropriate:

Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute.
(Required by Local Rule 208.2(e) on motions relating to discovery.)

Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case.
(If checked, skip Rule to Show Cause section below.)

By: _____
Counsel for Moving Party

RULE TO SHOW CAUSE - Check ONE of the Choice Listed Below:

____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the _____ day of _____, 20 ____

____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of _____, 20 ____ at 1:00 p.m. at 321 Swede Street, Norristown, Pa.

____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure

____ Rule Returnable at time of trial.

By: _____
Court Administrator

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

ARTHUR ALAN WOLK :
VS. : NO. 2016-01839 :
THE SCHOOL DISTRICT OF LOWER MERION :

COVER SHEET OF MOVING PARTY

Date of Filing Feb 25, 2016 Moving Party Defendant

Counsel for Moving Party Michael D. Kristofco, Esquire I.D. No. 73148

Document Filed (Specify) Preliminary Objections

Matter is: X (Appealable) _____ (Interlocutory)

Oral Argument: X (Yes) _____ (No) Discovery Needed: _____ (Yes) X (No)

CERTIFICATIONS - Check ONLY if appropriate:

_____ Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. (Required by Local Rule 208.2(e) on motions relating to discovery.)

_____ Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

By: _____
Counsel for Moving Party

RULE TO SHOW CAUSE - Check ONE of the Choices Listed Below:

_____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the _____ day of _____ 20____.

_____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of _____, 20____ at 1:00 p.m. at 321 Swede Street, Norristown, Pa.

X _____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure.

_____ Rule Returnable at time of trial.

By: _____
Court Administrator

ARTHUR ALAN WOLK,
Plaintiff

: **IN THE COURT OF COMMON PLEAS**
: **MONTGOMERY COUNTY, PENNSYLVANIA**

v.

THE SCHOOL DISTRICT OF
LOWER MERION,
Defendant

: **NO. 2016-01839**

:

:

:

:

ORDER

AND NOW, this _____ day of _____, 2016, upon consideration of the Defendant's Preliminary Objections and the response of the Plaintiff, if any, it is **HEREBY ORDERED AND DECREED** that Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

J.

Michael D. Kristofco, Esquire
Attorney ID. Nos. 73148
WISLER PEARLSTINE, LLP
460 Norristown Road, Suite 110
Blue Bell PA 19422
Attorneys for Defendant

ARTHUR ALAN WOLK,
Plaintiff

v.

THE SCHOOL DISTRICT OF
LOWER MERION,
Defendant

: **IN THE COURT OF COMMON PLEAS**
: **MONTGOMERY COUNTY, PENNSYLVANIA**

: **NO. 2016-01839**

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PRELIMINARY OBJECTIONS

Pursuant to Pa.R.Civ.P. 1028, Defendant, the Lower Merion School District (“LMSD” or the “District”), hereby states its preliminary objections to the Complaint filed by Plaintiff, Arthur Alan Wolk (“Mr. Wolk”), as a purported class action, as follows:

INTRODUCTION

The allegations in the Complaint made by Mr. Wolk are disjointed and difficult to follow. They are mostly conclusory statements lacking in factual details and/or Mr. Wolk’s own, mostly incorrect, legal conclusions. In essence, Mr. Wolk complains about virtually everything that has happened (or that he thinks has happened) in the District over the past 10 years including matters which have already been adjudicated elsewhere. The legal claims Mr. Wolk has asserted based on the allegations in the Complaint are frivolous and demonstrate a fundamental lack of knowledge and understanding of this area of the law.

ALLEGATIONS IN THE COMPLAINT

1. The Complaint alleges that “Mr. Wolk [is] an attorney in good standing with the Supreme Court of Pennsylvania” and brings this action “in his own name” and on behalf of a

class consisting of "present and past citizens and residents of the Township of Lower Merion who pay school taxes to the District now or who have done so in the past seven years¹." See Compl. at ¶ 3-4.

2. Mr. Wolk makes numerous allegations which fit into one of a number of broad categories: (a) allegations concerning the District's budgeting process and tax increases; (b) allegations concerning the District's curriculum; (c) allegations concerning the District's renovation of its high schools; (d) allegations concerning the District's laptop program; and (e) allegations concerning the public participation at District meetings.

A. Allegations Concerning Budgeting Process and Tax Increase

3. Mr. Wolk alleges as follows with respect to the District's budgeting process and tax increases:

For the past seven years, and now for 2016-17, the District has prepared a budget.

In each of those years, the District has claimed that due to an excess of expenses over anticipated revenues, tax increases in varying amounts were an absolute necessity.

Each year, the District went before the State Board of Education to request exemptions from the limitations in Act 1, and each year, based upon the representations made by the District, it was granted exemptions from the statutory limitations.

In each of the five fiscal years where audited financial results are available (2010-2015), the District presented a false and misleading budget to the taxpayers of Lower Merion. In each of the years the District proposed and did raise taxes to the Act 1 index and beyond, but still estimated there would be a deficit of \$8,000,000 each year. Each year the public was led to believe that even with the large tax increase, the District would have to use their "savings account" to balance the budget.

In each of the fiscal years in question, instead there were surpluses totaling at least \$40,000,000.

¹ Although Mr. Wolk seeks to certify a class of taxpayers for the past 7 years, he seeks damages equivalent to 10 years of tax increases in the amount of \$55,000,000. See Compl. at ¶ 80.

In contrast, the actual results for those same years reflect a multi-million dollar surplus averaging over \$6,000,000. Because of such surpluses, the District now has in the bank over \$55,000,000, while at the same time it proposes to request a tax increase of 4.43 % for 2016-2017.

The State Board of Education has conspired with the District and other school districts to circumvent and subvert the plain meaning and intent of the Public School Act of 1949 as amended by Acts 1 and 34.

The State Board of Education does no investigation, holds no hearings, makes no independent determinations of the merits or accuracy of submissions by the District, but approves them virtually without scrutiny.

The State Board of Education has put in place a system of appeals, which are not designed to permit an appeal by taxpayers and are designed instead in concert with the District to thwart appeals, deny due process, hinder and delay review for the sole purpose of aiding and abetting the violations of the statutes that were supposed to limit the ability of districts to abuse taxpayers, acts which the State Board of Education vehemently opposed.

The District has demonstrated repeatedly that it is unable or unwilling to budget, makes false and misleading calculations of deficits, inaccurate and deliberately understated revenues to be efficient in the administration of its finances, such that it is irresponsible and unable to meet its obligations without huge and repeated tax increases.

In spite of \$55,000,000 in surpluses in the bank and \$45,000,000 in surpluses over the past seven years, the District refuses to either return the money falsely ill-begotten or to credit taxpayers for these surpluses, even though its surpluses exceed an 8% of budget limit imposed by statute.

Each year the District is required to submit a form that attests that its unassigned fund balances are 8% or less of its budget, or it is unable legally to raise taxes.

Each year the District published such a form pursuant to Act 48, which was false because it attested that the unassigned fund balance was not in excess of 8%, when it was double that.

The District simply played the game of Hide the Peanut by moving the excess funds to another account, which it claimed was assigned, but it was assigned to nothing; thus, by this fraudulent non-disclosure the District was able to raise taxes repeatedly in violation of the law.

See Compl. at ¶¶ 32-37, 42, 44, 45, 74-76.

B. Allegations Concerning The District's Curriculum

4. Mr. Wolk alleges as follows with respect to the District's curriculum:

The District spends \$31,000 per student for public education.

The sum spent is higher than its nearest neighbor, Radnor School District, by \$4,500 per student, and higher by far than any other school district in the State or nation.

The District spends more per student than most private schools in the Township of Lower Merion, and there are many.

In spite of the exorbitant expenditures, the students of the District score on par with districts spending about half.

In fact, the District pays only \$24,000 per student to charter schools, whose obligation to provide a quality public education for their students is the same mandate as that of the District.

The reasons for the expenditures per student that exceed those of private schools are

The systematic and continuous failure to afford basic public school education in favor of an impermissible expansion into the arena of education reserved for private school education.

The insistence of the District to hire nearly one for one teacher to increase in student population, with a teacher-student ratio of one teacher for ten students, unheard of in public education and only rarely achieved in private schools.

The insistence of the District to hire twice the number of highly paid administrators than recommended by law at an increased annual expense of millions of dollars.

The insistence of the District on paying outside contractors exorbitant sums for services, without competitive bid.

The insistence of the District to hire more psychologists and nurses than any other district in the State to perform services that should be performed by parents and private practitioners.

The insistence of the District to provide free laptops to students in the most affluent Township in the State, let alone the Country.

The insistence of the District to continue academic programs that have as few as three participants at a cost of hundreds of thousands of dollars.

The consistent and systematic collaboration with the teachers' union and State Board of Education to mislead the community as to the cost of new labor

contracts by hiding the actual compensation increases in deliberate misrepresentations. For example:

The District claimed that its new teachers' contract provided for a compensation increase of only .5 % annually. That was false, it is 7%.

The District complained that its cost of pension contributions went from 7% to over 20% annually, neglecting to report the actual budgetary significance that 50% was reimbursed by the State.

The annual compensation of District teachers, and therefore administrators, is the highest in the State, and likely the nation, demonstrating a complete failure to budget, negotiate fair teacher and administrator contracts, and a complete disregard of the financial impact such dereliction of duty has on the taxpayers of Lower Merion.

See Compl. at ¶¶ 47-52.

C. Allegations Concerning The District's Renovation Of Its High Schools

5. Mr. Wolk alleges as follows with respect to the District's Renovation of its High Schools:

The District decided to renovate the Lower Merion High School and the nearby Harriton High School ("Harriton").

The proposed costs for such renovations were so high as to constitute the largest public school expenditures in the State or even the nation's history.

While holding public hearings on the subjects, where the majority of those in attendance opposed the huge expenditures, exceeding \$238,000,000, the District embarked on a plan to deny the taxpayers of Lower Merion the right to a referendum to refuse what would saddle them with debt and higher taxes.

The public hearings were another sham, with each protestant limited to three minutes and no dialogue permitted.

The not-to-exceed cost of Harriton was to be \$98,000,000.

The actual authorized cost of Harriton was more than \$103,000,000, nearly twice the amount of the previously largest public school expenditure of \$69,000,000 in a nearby district.

But in order to subvert the taxpayers' absolute right to a referendum and their absolute right to have a voice in the scope of the renovations, the District systematically refused to

consider cost saving proposals and excluded taxpayers from the process to avoid a referendum, which would then have been required.

Both projects, which were designed to be built together, however could not be built without another subterfuge, and that was redistricting.

Because both schools would now hold at least 1,600 students and there were not that many students to fill the schools, the District redistricted and told the State that it needed 2,500 student capacity to meet demand, when the District knew at all times it was never going to put 2,500 students in each school and never anticipated that many attendees.

Worse, the District redistricted with overlapping high school districts such that students who used to walk to Lower Merion High School, now had to be bused all the way past Lower Merion to Harriton, lest Harriton be determined to be excessive to the District's needs.

The District then made Harriton so large that the storage of school buses on the property was no longer possible and the District instead had to rent space elsewhere, resulting in millions of dollars in additional costs for drivers, buses and land rent.

In order to avoid the requirement of a referendum, the District engaged in yet another subterfuge by:

Claiming operating cost deficits to justify unnecessary tax increases when the real purpose was not what was reported to the public or the State, but instead was a deliberate effort to build a surplus so it could put a large down payment on the unprecedented cost of renovations.

The effect of the misrepresentations to the taxpayers of Lower Merion and the State Board of Education was to justify an exemption from the Taj Mahal statute by making it appear, albeit falsely, that the District could afford the absurdly large schools, needed the space due to redistricting and enrollment growth, while the District never intended to pay for the renovations of the schools without huge increases in taxes, which were never disclosed.

In effect by false representation, misleading public releases, doctoring of the figures, cooking the books and outright lying to public authorities, the District denied the taxpayers of Lower Merion their right to vote against the projects for which they are now in debt almost a quarter billion dollars.

See Compl. at ¶¶ 53-64.

D. Allegations Concerning The District's Laptop Program

6. Mr. Wolk makes the following allegations regarding the District's laptop program:

The District embarked on a campaign to give laptop computers to students in schools, regardless of their wherewithal or even existence of computers in the homes of the students.

Unbeknownst to the taxpayers of Lower Merion and to the student recipients of the laptops and their families, the District was unlawfully stalking the students and their families by surreptitiously and without permission taking some 66,000 snapshots through the built-in cameras of the laptops.

The conduct of the District in authorizing, paying for, allowing, permitting and promoting such voyeurism was a violation of the students' and taxpayers' rights to privacy guaranteed by Pennsylvania law, and a crime.

A student accidentally discovered the perverted conduct by the District and its esteemed and highly paid educators and reported it, which resulted in the payment of \$600,000 in damages by the District and hideous national publicity, but not a single firing or criminal prosecution of the perpetrators.

The perpetrators of this invasion of privacy and, to the extent these minors were unclothed or otherwise, was the commission of District sanctioned child pornography that was allowed, permitted and unpunished by the District.

This conduct by the District is out of control and emblematic of a good reason to appoint a trustee to oversee its finances, a trustee to change the culture and climate of illegal conduct, and a trustee to punish the voyeurs who found it acceptable to violate the Constitutional Rights of students and taxpayers and the Pennsylvania criminal laws.

See Compl. at ¶¶ 65, 67-71.

E. Allegations Concerning Public Participation At District Meetings

7. Mr. Wolk makes the following allegations regarding public participation at District meetings:

The District does not permit taxpayer dialogue, thus the taxpayer is powerless to influence the outcome of District decisions.

The District limits taxpayer comments during public hearings to three minutes, regardless of the number of attendees or the number who wish to speak, which renders the taxpayer commentaries meaningless and incomplete.

The process put in place by the District for public meetings is designed to thwart public comment by unduly restricting the process.

The District makes no change, regardless of the number of opposing views by taxpayers.

The District restricts the flow of information the taxpayers need to make a decision whether to oppose or support District action.

Much of the District decisions are made in secret, and the District pays only lip service to the requirement for public hearings.

Public hearings conducted by the District afford no detail or support for District decisions, and are designed to thwart the dissemination of either public information or the receipt of public views with regard to any matter, including taxation, in violation of the public's right to know and the taxpayers' rights to due process.

Subcommittees of the District are equally unamenable to public input, and completely disregard the requirement and purpose of public hearings required to afford taxpayers due process.

The submissions to the State Board of Education are done in secret, conducted in secret and decided in secret, with the public submissions being only enough to give the appearance of due process and compliance with statutory requirements when in truth and in fact, there is neither input nor dialogue accepted or considered from the public.

The District refuses to answer questions posed by taxpayers at public hearings.

See Compl. at ¶ 41.

LEGAL CLAIMS BEING MADE

8. Based on the above allegations, Mr. Wolk asserts five (5) counts against the District.
9. In Count I, Mr. Wolk alleges a common law claim of Fraud and Deceit based upon the above allegations concerning the District's budgeting process and tax increases and its renovation of its high schools.

10. Count I of the Complaint seeks, as damages, that the District be ordered to disgorge an amount equivalent to 10 years of tax increases in the amount of \$55,000,000.

11. In Count II, Mr. Wolk alleges a common law claim of misappropriation based on the theory that “the collection of taxes by false pretenses was misappropriation of the taxpayers’ money.” See Compl. at ¶ 87.

12. In Count II, the Complaint seeks, as damages, \$55,000,000.

13. In Count III, Mr. Wolk alleges a common law claim of theft based on the theory that “the retention of the ill-begotten tax funds is a theft of the plaintiff’s property.” See Compl. at ¶ 89.

14. In Count III, the Complaint seeks, as damages, \$55,000,000.

15. In Count IV, Mr. Wolk alleges a common law claim of malfeasance and misfeasance based on the allegation that “District has committed malfeasance and misfeasance in office, and thus it has forfeited its right to manage and operate the School District.” See Compl. at ¶ 91.

16. In addition to simply restating all of the above conclusory allegations, Mr. Wolk also claims that the “District” engaged in malfeasance and misfeasance due to the fact that the “District has refused to require those Directors with children in the system to abstain from voting on expenditures that for them provide a private school education at public expense.” See Compl. at ¶ 106.

17. In Count IV, Mr. Wolk seeks, as relief, “the suspension of the authority of the District Board members to act for the District and the appointment of a trustee to undertake their responsibilities, with explicit direction to get spending under control and in compliance with the law, and such other relief this Court deems appropriate under the circumstances, together with costs of suit.” See Compl. at Count IV Wherefore Clause.

18. Finally, in Count V, Mr. Wolk alleges a claim for “Equitable Relief”.

19. Count V is premised on Mr. Wolk's assertion that he has no adequate remedy at law because “[t]here is no system in place for the public to regain control of the District, nor any process by which taxpayers can challenge the heavy handed conduct of the District.” See Compl. at ¶ 112.

20. Then, Mr. Wolk acknowledges that he has remedies but then alleges that the “State procedures for appeal have been designed to thwart taxpayer participation in the process, such that there is no effective means by which taxpayers can challenge the conduct of the District except through this litigation.” See Compl. at ¶ 113.

21. In Mr. Wolk's view, “[t]he only remedy that would be effective is a Court supervised change in the procedures followed by the District once new directors are qualified and sworn.” See Compl. at ¶ 116.

22. Count V requests that this Court take over operation of the District and ensure that certain changes are made. See Compl. at ¶ 117.

FIRST PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(4)
(Plaintiff's Claims Present Nonjusticiable Political Questions)

23. Paragraphs 1 through 22 above are incorporated herein at length.

24. The claims being made in this matter should be dismissed because judicial abstention under the political question doctrine applies.

25. Judicial abstention applies because:

- (a) there is a textually demonstrable constitutional commitment of the disputed issue to a coordinate political department;
- (b) there is a lack of judicially discoverable and manageable standards for resolving the disputed issue;

- (c) the issue cannot be decided without an initial policy determination of a kind clearly for non-judicial discretion;
- (d) a court cannot undertake independent resolution without expressing lack of the respect due coordinate branches of government;
- (e) there is an unusual need for unquestioning adherence to a political decision already made; and
- (f) there is potential for embarrassment from multifarious pronouncements by various departments on one question.

26. Based on the foregoing, Plaintiff's claims should be dismissed.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

SECOND PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(4)
(Plaintiff Lacks Standing)

- 27. Paragraphs 1 through 26 above are incorporated herein at length.
- 28. Plaintiff does not have a substantial, direct and immediate interest in the outcome of this litigation which is different than the interest of all citizens in procuring obedience to the law.
- 29. Absent special circumstances, which do not exist here, Plaintiff's status as a taxpayer is insufficient to confer standing.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

THIRD PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(4)
(Plaintiff's Claims are Barred by the Political Subdivision Tort Claims Act)

- 30. Paragraphs 1 through 29 above are incorporated herein at length.

31. Counts 1 through 3 of the Complaint all assert claims for money damages based upon intentional torts.

32. Under the Tort Claims Act, "no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person," subject only to certain specific exceptions none of which are applicable to the present matter. 42 Pa.C.S.A. § 8541.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

FOURTH PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(5)
(Failure to Join Indispensable Parties)

33. Paragraphs 1 through 32 above are incorporated herein at length.

34. The absence of an indispensable party goes to the court's jurisdiction. "Unless all indispensable parties are made parties to an action, a court is powerless to grant relief." Sprague v. Casey, 520 Pa. 38, 550 A.2d 184, 189 (1988).

35. An indispensable party is one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing upon those rights.

36. In the Complaint, Mr. Wolk seeks to have the elected Board of School Directors removed from office, see Compl. at ¶ Count VI Wherefore Clause, but yet fails to join any of the elected School Board Members as parties.

37. In the Complaint, Mr. Wolk seeks to eliminate District employees and/or reduce their salaries. See Compl. at ¶ 117.

38. However, Mr. Wolk has failed to join any of the unions with whom the District has collective bargaining agreements as a parties to this action.

39. Mr. Wolk seeks to curtail PDE's right to approve District curriculum and to have the Court force the District to "return to basic public school education" and seeks to curtail PDE's control over approving the District's budget, tax increases and construction costs. See Compl. at ¶ 117(c).

40. However, Mr. Wolk fails to join PDE or the Commonwealth as a party.

41. Because Mr. Wolk failed to join all parties whose rights are so connected with the claims that no relief can be granted without infringing upon those rights, this Court lacks jurisdiction over this matter.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

FIFTH PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(4)
(Failure to state a claim upon which relief can be granted)

42. Paragraphs 1 through 41 above are incorporated herein at length.

43. Plaintiff's claims are premised on his conclusory allegations that the District engaged in some type of fraud.

44. Fraud must be plead with particularity. Pa. R. Civ. P. 1019(b).

45. Plaintiff must specifically allege all facts constituting the fraud – namely, (1) a representation (2) which is material to the transaction (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

46. However, Plaintiff only includes vague and conclusory statements that the District engaged in fraud; fails to quote any specific statement which he asserts was fraudulently made; fails to plead any specific dates from which the District can even begin to ascertain when, over

the past ten years, the alleged fraudulent misrepresentations were made; and fails to specifically allege how he justifiably relied upon any of the District's alleged fraudulent misrepresentations.

47. Moreover, the Complaint alleges that the "District has committed malfeasance and misfeasance in office." See Compl. at ¶ 90.

48. Malfeasance in office "is not merely error in judgment or departure from sound discretion, but the act, omission or neglect must be wilful, corrupt and amount to a breach of duty legally required by one who has accepted public office." Commonwealth v. McSorley, 189 Pa.Superior Ct. 223, 227-228, 150 A.2d 570, 572 (1959). Misfeasance has been construed to mean "either the breach of a positive statutory duty or the performance by a public official of a discretionary act with a corrupt motive." Id. at 227, 150 A.2d at 572.

49. A claim of malfeasance and/or misfeasance can only be asserted against a public official and not a political subdivision.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

SIXTH PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(2)
(Failure to Comply with Rules of Court)

50. Paragraphs 1 through 49 above are incorporated herein at length.

51. Most of Plaintiff's claims are based upon allegations that the District has somehow misrepresented what is contained in its annual budget. See Compl. at ¶ 35 ("In each of the five fiscal years where audited financial results are available (2010-2015), the District presented a false and misleading budget to the taxpayers of Lower Merion.")

52. Pursuant to Pa.R.Civ.P. 1019(i), Plaintiff is required to attach to the Complaint any writing upon which his claim is based.

53. Plaintiff has failed to attach any documents to his Complaint despite the fact that his claims are based on alleged misrepresentations contained in the District's budgets.

54. A complaint should be stricken for failure to attach an essential document.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

SEVENTH PRELIMINARY OBJECTION PURSUANT TO Pa. R.C.P. 1028(a)(7)
(Failure to Exhaust Statutory and Administrative Remedies)

55. Paragraphs 1 through 54 above are incorporated herein at length.

56. Plaintiff has alleged numerous matters for which statutory and administrative remedies exist but Plaintiff has failed to exhaust those remedies.

57. Plaintiff complains about improper expenditures, however, in the School Code, it provides that:

The Commonwealth, the school district of the second, third or fourth class, or any taxpayer thereof on behalf of said Commonwealth, district, or any person or persons against whom any sum has been charged in any report filed by the auditors of such school district, may appeal from any auditors' report. Such appeal shall be taken to the court of common pleas of the proper county by the Commonwealth within ninety (90) days after said report is filed in the Department of Public Instruction, and by all other appellants within forty-five (45) days after said report is filed in the court of common pleas. Any taxpayer taking or intervening in an appeal shall file in said court of common pleas a bond, with one or more sufficient sureties, conditioned that the party appealing will prosecute said appeal with effect and that said party will indemnify and save harmless said district from all costs that may accrue upon said appeal or by reason of such intervention subsequently thereto.

See 24 P.S. § 24-2451 (emphasis added).

58. However, Plaintiff fails to allege that he followed his statutory remedy to appeal from the auditor's report.

59. Plaintiff makes numerous complaints about how the District conducts public comment.

60. The law regarding public comment is contained in the Pennsylvania Sunshine Act. 65 Pa.C.S.A. § 701 et seq.

61. Under 65 Pa.C.S.A. § 713, it provides in part that:

A legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting.

65 Pa.C.S.A. § 713.

62. The Complaint includes no allegations that Plaintiff complied with the statutory remedy set forth in the Sunshine Act.

63. Plaintiff alleges that the District failed to comply with its legal obligations under Act 34 of 1973 in connection with the renovation of the District's two high schools.

64. Pursuant to 24 P.S. § 7-731, it provides that “[t]he Department of Education, with respect to construction or reconstruction of public school buildings, shall have the power and its duties shall be: . . . (5) To receive and investigate complaints from the public or other source concerning any school building construction or reconstruction project.” See 24 P.S. § 7-731(5).

65. The Court lacks jurisdiction to consider claims based upon school building expansion and consolidation where the plaintiff failed to exhaust his statutory administrative remedies by seeking review from the Department of Education under Public School Code of 1949. See 24 P.S. § 7-731.

66. The Complaint includes no allegations that Mr. Wolk exhausted his statutory remedies with respect to the District's high school renovations.

67. The Complaint alleges that the District's curriculum is improper because of the District's “systematic and continuous failure to afford basic public school education in favor of

an impermissible expansion into the arena of education reserved for private school education.”

See Compl. at ¶ 52(a).

68. However, pursuant to 22 Pa. Code § 4.81(a), the Secretary of Education “will receive and investigate allegations of curriculum deficiencies from professional employees, commissioned officers, parents of students **or other residents** of a school entity.” See 22 Pa. Code § 4.81(a)(emphasis added).

69. The Complaint includes no allegations that Mr. Wolk has exhausted his administrative remedies for the curriculum deficiencies of which he complains.

70. When the legislature has prescribed an administrative procedure and provided for administrative remedies for a matter, those procedures must be strictly pursued and those remedies must be exhausted before any judicial review or involvement is proper. Krug v. City of Philadelphia, 620 A.2d 46, 48 (Pa. Commw. 1993).

71. The Complaint seeks to remove the elected school board directors from office. See Compl. at ¶ Count VI (Wherefore Clause).

72. However, Section 318 of the School Code, 24 P.S. § 3-318, authorizes a court of common pleas upon proper petition to remove elected school directors from office for refusal or neglect of a duty imposed upon them and “which is by the provisions of [the School Code] made mandatory upon them to perform.” 24 P.S. §3-318.

73. The Complaint includes no allegations that Mr. Wolk has complied with the statutory requirements in Section 318 of the School Code.

74. Absent compliance with the procedure set forth in Section 318 of the School Code, the only way to remove a duly elected school board member is through a *quo warranto* action which has not been brought.

WHEREFORE, the District respectfully requests that this Honorable Court sustain Defendant's Preliminary Objections and dismiss Plaintiff's claims with prejudice.

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ARTHUR ALAN WOLK,
Plaintiff

v.

THE SCHOOL DISTRICT OF
LOWER MERION,
Defendant

: **IN THE COURT OF COMMON PLEAS**
: **MONTGOMERY COUNTY, PENNSYLVANIA**
:
: **NO. 2016-01839**
:
:
:
:

CERTIFICATE OF SERVICE

I, certify that on February 25, 2016, a true and correct copy of Defendant's Preliminary Objections were served via email and first class mail upon:

Arthur Alan Wolk
The Wolk Law Firm
1710-12 Locust Street
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