

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

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| <b>THE COUNTY OF CARBON</b> and                      | : |                    |
| <b>CHARLES GETZ, WILLIAM J. O'GUREK</b> , and        | : |                    |
| <b>WAYNE NOTHSTEIN</b> , In Their Capacity           | : |                    |
| as Commissioners of Carbon County, and               | : |                    |
| <b>THE CARBON COUNTY TAX CLAIM BUREAU</b> ,          | : |                    |
| <b>Plaintiffs</b>                                    | : |                    |
| <b>vs.</b>   | : |                    |
|  | : | <b>No. 09-3449</b> |
| <b>THE PANTHER VALLEY SCHOOL DISTRICT</b> ,          | : |                    |
| <b>THE PANTHER VALLEY SCHOOL DISTRICT</b>            | : |                    |
| <b>SCHOOL BOARD, ROSEMARY POREMBO</b> , In           | : |                    |
| Her Capacity as Superintendent of the Panther Valley | : |                    |
| School District, and <b>RONALD SLIVKA</b> , and      | : |                    |
| <b>ANTHONY PONDISH</b> ,                             | : |                    |
|  | : |                    |
| <b>Defendants</b>                                    | : |                    |

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|------------------------------|--|
| Jane Roach Maughan, Esquire  | Counsel for Plaintiffs   |
| David F. Conn, Esquire       | Counsel for Defendants (Panther Valley School District, Panther Valley School Board, & Rosemary Porembo) |
| Jeffrey C. Schwartz, Esquire | Counsel for Intervenor (Portnoff Law Associates)   |
| James R. Nanovic, Esquire    | Counsel for Intervenor (Portnoff Law Associates)   |

**MEMORDANDUM OPINION**

Cheslock, S.J. – January \_\_\_\_\_, 2012

As stated in our September 29, 2011 Opinion and Order, this Court finds the factual circumstances presented in the case *sub judice* to be analogous to those presented in *Pennsylvania Land Title Association v. East Stroudsburg Area School District*, 913 A.2d 961 (Pa.Cmwlth.2006), *petition for allowance of appeal denied*, 593 Pa. 743, 929 A.2d 1163 (2007). We would be remiss, however, if we did not address the issue of reimbursement of commissions, as the *PLTA* case did not.

## **RETSL and MCTLA are not Irreconcilable**

The *PLTA* case provides:

Furthermore, Section 5860.201a(a) of the RETSL gives tax claim bureaus the authority to use other methods of collection, including the MCTLA, while at the same time requiring compliance with the provisions of RETSL. Similarly, the 2004 amendment to the MCTLA also gave tax claim bureaus authority to use the procedures of that act to collect delinquent real estate taxes in addition to the procedures set forth in the RETSL. 53 P.S. Sec 7193.5. Thus, if a tax claim bureau, as a taxing authority, is authorized to use the provisions of the MCTLA to collect delinquent taxes yet, is still required to comply with the provisions of the RETSL (72 P.S. Sec 5860.201a(a)), then it stands to reason that other taxing authorities, like the School Districts, who have opted to use the MCTLA provisions, would likewise be required to comply with the RETSL provisions. Although not specifically stated in the statutes, we believe this compliance requirement applies to the specific provision for making returns to the tax claim bureau. It should also be noted that the Commonwealth Court in [*City of Allentown v.*] Kauth [, 874 A.2d 164 (Pa.Cmwlth.2005)] held that “the two statutes are very similar and operate concurrently with one another .”. Kauth, *supra*, at 169. Likewise, we find that the MCTLA and RETSL statutes are not mutually exclusive, but instead are very similar and their provisions are designed to operate in conjunction with one another. Accordingly, we believe that it is possible to give effect to the provisions of both the MCTLA and the RETSL; therefore, the provisions of these two statutory collection schemes are not irreconcilable. (*PLTA* at 968, *quoting* the Opinion of the Trial Court at 24-26).

We believe that the inclusion of repayment of commissions owed is a logical extension of the *PLTA* decision. According to § 5860.204(b)(2) of RETSL:

In the event that any such taxes are received or accepted by any taxing district contrary to the provisions of this section, the taxing district shall be liable to the bureau for, and the bureau shall deduct from any distribution to which the taxing district is entitled under section 205, all charges, fees, costs, commission and interest to which the bureau would otherwise have been entitled under the act if payment had been made directly to the bureau.

We read this section to mean that the 5% commissions provided for by § 5860.204 are payable to the Carbon County Tax Claim Bureau despite the School District’s use of MCTLA instead of RETSL. We believe that RETSL’s provisions must be complied with

in conjunction with the provisions of any alternative collection scheme such as the MCTLA. Therefore, the Carbon County Tax Claim Bureau is now, and always has been, entitled to the 5% commissions.

## **CONCLUSION**

We maintain our position that the *PLTA* case is controlling authority; therefore we recommend that our decision be **AFFIRMED**. Furthermore, though we note that the *PLTA* case did not address commissions, we find no reason to deny payment of commissions due and owing to the Carbon County Tax Claim Bureau under the RETSL, the terms of which the court in *PLTA* determined demand compliance regardless of a district's decision to collect under an alternative collection scheme such as the MCTLA.

**BY THE COURT:**

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**Jerome P. Cheslock, S.J.**