

Thursday, April 3, 2008

Case against Galion BOE to go before jury

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The preliminary injunction hearing and hearing on the merits of State ex. rel. Steven Kemle vs. the Galion board of education scheduled to commence on April 3 has been postponed. The case will be set for jury trial ordered by Judge Russell Wiseman. A date has not yet been set.

"I am happy with this turn of events," said Steven Kemle, plaintiff.

Yesterday, the judge dismissed counts one and four. In the case against the Galion board of education two sections of the original complaint were dismissed, count one — the alleged breach of fiduciary duty and count four — alleging that the defendants are in violation of RC 311341 which deals with the sale or donation of real property by a school district.

All remaining causes, causes no. 2 (violation of the Sunshine Laws) and no. 3 (violation of public records) are continued and the hearing of title merits will be continued.

"They (counts one and four) were dismissed because he (Wiseman) did not believe that there was of action under the law for those claims," said John Barga, counsel for the plaintiffs. "Those claims are not recognized causes in Ohio."

Count two (the violation

of Sunshine Laws) and count three (violation of public records laws) are causes of action and are recognized in Ohio.

"Counts two and three were not dismissed because they could potentially state a claim," said Steven Friedman, counsel for the board of education. "The hearing for tomorrow was postponed." Friedman added there should be a date set for the hearing before a jury sometime next week.

Wiseman also made the decision to have a jury sit the hearing.

"The jury will act in an advisory position," said Friedman.

Friedman reiterated that no group has come forward with a plan for the old high school or the agreed upon bond for demolition of the building.

On Jan. 14, 2008, a group of citizens filed legal action against the Galion board of education, asking the court to stop the demolition of the old Galion High School. An agreement between the two sides was reached to complete the abatement with a view to remodel. The first hearing of the case was scheduled for Feb. 19. That hearing was continued until March 5.

During negotiations between lawyers, defendants, plaintiffs, and judge on March 5 an agreement was made to run the preliminary injunction request hearing

and hearing on the merits April 3, was postponed until together. April 3 and 4 were set further notice. The case will be heard in front of a Jury by order of Judge Russell Wiseman.

The hearing scheduled to begin at 9 a.m. Thursday,

Board response to judge's decision

From the Galion board of education:

"The Crawford County Court of Common Pleas issued an order today granting the board of education's motion for judgement on the pleadings, in part, and denying it part. The court found beyond doubt that plaintiffs could prove no set of facts supporting their claim the board breached its fiduciary duty to the community when it passed its Oct. 11, 2007 resolution authorizing the demolition of the old high school, and therefore the court dismissed plaintiffs' first claim. The court also dismissed plaintiffs' fourth claim that alleged that the board was required to follow the procedures in section 3313.41 of the Ohio Revised Code prior to demolishing the old high school.

The court did not dismiss plaintiffs' second claim or third claim. On these claims, the court ruled, without judging the merits or truth of plaintiffs' allegations, that if the plaintiffs could prove their allegations, these claims could state proper claims. Count two alleges the board violated the open meetings act and count three alleges the board violated the public records act. The court also continued the hearing that was scheduled on these two remaining claims to a future date, which should be set soon.

The board is pleased the court agreed that it did not breach any fiduciary duty in passing the Oct. 11, 2007 resolution. In addition, the board remains confident that it did not violate the open meetings act or public records act, and expects it will be fully vindicated at the hearing on these remaining claims.

In the meantime, the board remains amenable to reconsideration of its Oct. 11, 2007 resolution if an interested party is able to provide the board with a detailed and potentially viable plan for putting the old high school to productive use, and also provide the board and the community with sufficient security that the building could be demolished at a future date if such a plan does not succeed. To date, the board has not received any detailed or viable plans, or commitment of sufficient security, from any interested party.