

# *A case of semantics*

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In the case State ex rel. Steven A Kemle, et al. vs. Galion City School District Board of Education, et al. there is some disagreement over the reason for the judge's order to dismiss claims one and four, and the reason for the jury trial.

John Barga, counsel for the plaintiffs, said "those claims are not recognized causes in Ohio," and they would be "dismissed because the judge did not believe that there was action under the law for those claims."

While Steven Friedman, counsel for the defendants, has said the judge dismissed claims one and four for lack of evidence.

In an official statement superintendent Kathy Jenney said "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 resolution authorizing the demolition of the old high school, and therefore the Court dismissed Plaintiffs' first claim...." and further concluded "The Board is pleased the Court agreed that it did not breach any fiduciary duty in passing the Oct. 11, resolution ..."

About the jury trial, Friedman said it is the judge's decision whether to call a jury or not and that the jury will act in an advisory roll.

On the other hand, Barga said, "The request for a jury trial was in the original complaint. The defendants never objected to that request. They never filed a brief that the plaintiffs were not entitled to a trial by jury."

In an order faxed from Judge Russell Wiseman's office: "This matter comes before the Court as a result of the conference telephone call

before a jury. At the time these matters were consolidated for hearing neither party asserted their right to a jury trial. However, after due consideration and for good cause show, the Court finds that under R.C. 2311.04, the Court may allow certain issues of fact to be submitted to a jury as demanded by Plaintiffs.

"Therefore, the Court finds that Plaintiffs' request for jury trial as demanded in their complaint is appropriate.

"Therefore, the Preliminary Injunction Hearing and

hearing on the merits scheduled to commence on April 3, 2008, is vacated. This matter shall be set for jury trial at the earliest available date.

"It is so ordered."

"The jury will decide," said Barga. Eight jurors will be selected on the day of the trial from a group summoned to serve. Barga explained the judge will ask a few questions of the potential jurors, then turn it over to the lawyers. Once the eight jurors, with one or two alternates, are seated, the trial will begin.

The jury will listen to the facts as presented and decide the facts and what happened, explained Barga. Their function is to listen to the evidence, make a decision whether the Sunshine Law was violated and whether the Open Meetings law was violated.

The judge then decides on a penalty if there is going to be a penalty.

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

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# Case

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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 the judge on March 5 an agreement was made to run the preliminary injunction request hearing and hearing on the merits

together. April 3 and 4 were then set aside for the case. The hearing scheduled to begin at Thursday, April 3, was postponed, and claims one and four of the plaintiffs request were dismissed. The remaining portions of the case will be heard in front of a jury by order of Judge Russ Wiseman. The date will be announced once set sometime next week.

## Bond and plan still required by board

In the statement from the Galion board of education concerning the continuance of the April 3 hearing, the board repeated its desire to see a business plan and demolition bond for anyone interested in purchasing the old high school.

"In the meantime, the Board remains amenable to reconsideration of its October 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."

There have been some question as to what a demolition bond is ("security that the building could be demolished at a future date"), if there is such a thing, and if this type of bond can be acquired for a non-profit organization.

Donna Boggs from Cutrupi and Associates did some research and found there is such a thing as a "demolition bond" for a non-profit organization.

"There's a lot of work involved," Boggs said, "but it can be done."

Boggs said the bond specialist from New York that Cutrupi and Associates work with has provided the following information.

"In general," she said, "bonds offer a third party guarantee that a qualified party (generally a contractor or developer) will perform the contractual obligations. The original owner (party requiring the bond) has the right to preserve the original intent of the building's use.

This bond could be tailored toward *site improvement bond* requirements or *performance bond* guidelines.

"The insurance company offering the bond would require the financial capacity of the contractor developer to support the contracts liability. Therefore, if the entity interested in acquiring the building, is only depending on grant moneys or tax credit project funds, then a lending institute could offer proof of the qualified relationship and backing of all persons involved in the entity, developed for the purpose of acquisition of the building.

"Legal documents surrounding the current and future building use requirements, properly written permits and a renewable, non-cancellable bond would all need to be in place to allow smooth processing."