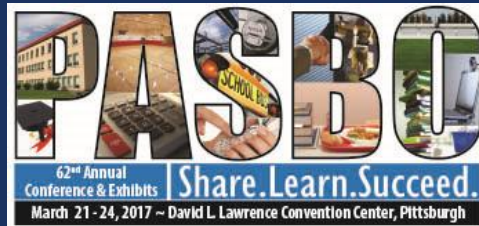


CF  
WW  
+S

## WHO CAN AND CANNOT SIGN PROCUREMENT CONTRACTS?



BY: JOHN RUSHFORD



PASBO 62<sup>ND</sup> ANNUAL CONFERENCE AND EXHIBITS, PITTSBURGH

March 2017

1

CF  
WW  
+S

## PENNSYLVANIA SCHOOL CODE PROVISION ON CONTRACTS SECTION 5-508

§ 5-508. Majority vote required; recording

The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required in order to take action on the following subjects:

Fixing length of school term.

Adopting textbooks.

Appointing or dismissing district superintendents, assistant district superintendents, associate superintendents, principals, and teachers.

Appointing tax collectors and other appointees.

Adopting the annual budget.

Levying and assessing taxes.

Purchasing, selling, or condemning land.

Locating new buildings or changing the locations of old ones.

Dismissing a teacher after a hearing.

Creating or increasing any indebtedness.

Adopting courses of study.

PASBO 62<sup>ND</sup> ANNUAL CONFERENCE AND EXHIBITS, PITTSBURGH

March 2017

2



## SECTION 5-508 CON'T

Directors void and unenforceable.

Establishing additional schools or departments.

Designating depositories for school funds.

Entering into contracts of any kind, including contracts for the purchase of fuel or any supplies, where the amount involved exceeds one hundred dollars (\$ 100).

Fixing salaries or compensation of officers, teachers, or other appointees of the board of school directors.

Entering into contracts with and making appropriations to the intermediate unit for the district's proportionate share of the cost of services provided or to be provided for by the intermediate unit.

Failure to comply with the provisions of this section shall render such acts of the board of school void and unenforceable.



## CONTRACTS WITH A SCHOOL DISTRICT

- One who contracts with a school district must, at his peril, know the extent of the power of the school district's officers in making the contract. *Charleroi Lumber Company v. Bentleyville Borough School District*, 334 Pa. 424, 6 A. 2d 88 (1939). One dealing with the president of a school board is bound to know the extent of the authority to contract given the president by the board and to know that the board of directors may repudiate any contract provision to which it has not assented. *Roland v. Reading School District*, 161 Pa. 102, 28 A. 995 (1894). School directors can bind the district they represent only when they act in their official character and in accordance with the requirements of the Code. *Jackson v. Conneautville Borough School District*, 280 Pa. 601, 125 A. 310 *School Dist. v. Framlau Corp.*, 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974).



## RESIDENT OF THE BOARD AUTHORITY

### § 4-427. Authority of president

The president shall be the executive officer of the board of school directors, and as such he, together with the secretary, when directed by the board, shall execute any and all deeds, contracts, warrants to tax collectors, reports, and other papers pertaining to the business of the board, requiring the signature of the president. In school districts other than in school districts of the first class he shall, after the board has acted on and approved any bill or account for the payment of money authorized by this act, sign an order to the treasurer for the payment of the same. **He shall in no case, except as this section otherwise provides, sign any order for any sum unless the same has first been acted upon and approved by the board, and the amount thereof and the name of the payee properly inserted. Any orders which shall be for the payment of amounts owing under any contracts which shall previously have been approved by the board, and by the prompt payment of which the district will receive a discount or other advantage, may be signed without the approval of the board first having been secured. All such orders shall be presented to the board at its next meeting.** The president shall perform such other duties as the board may direct and as pertain to his office.



## SUNSHINE ACT

§ 704. Open meetings. Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered). *65 Pa.C.S. § 704.*



## CAN A SUPERINTENDENT SIGN A CONTRACT?

### § 10-1081. Duties of superintendents

The duties of district superintendents shall be to visit personally as often as practicable the several schools under his supervision, to note the courses and methods of instruction and branches taught, to give such directions in the art and methods of teaching in each school as he deems expedient and necessary, and to report to the board of school directors any insufficiency found, so that each school shall be equal to the grade for which it was established and that there may be, as far as practicable, uniformity in the courses of study in the schools of the several grades, and such other duties as may be required by the board of school directors. The district superintendent shall have a seat on the board of school directors of the district, and the right to speak on all matters before the board, but not to vote.



## WHAT ABOUT A BUSINESS MANAGER?

§ 10-1089. Business administrator(a) A governing board of a school entity may employ or continue to employ a person serving in the function of business administrator of the school entity who shall perform such duties as the governing board may determine, including, but not limited to, the business responsibilities specified in section 433 of this act.(b) The governing board may enter into a written employment agreement with a person hired after the effective date of this section to serve as a business administrator or into an amended or renewed agreement with a person serving in that function as of such effective date. The agreement may define the period of employment, salary, benefits, other related matters of employment and provisions of renewal and termination of the agreement.(c) Unless otherwise specified in an employment agreement, the governing board shall, after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove a business administrator for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth or other improper conduct.(d) **A person serving as business administrator shall not be a member of the governing board of the school entity.**(e) **A person serving as business administrator may serve as secretary or treasurer of the governing board. 24 P.S. § 10-1089.**



## SCHOOL DIST.V. FRAMLAU CORP., 15 PA. COMMW. 621 (PA. COMMW. CT. 1974)

- Appellee general contractor was hired by appellant school district to construct an addition to a high school. Sometime thereafter, the school district terminated the general contractor's contract. The general contractor filed suit in assumpsit for wrongful termination and sought damages for work already performed. During trial, counsel for the school district entered into a settlement agreement with the general contractor. The school board president agreed. However, the school board never ratified the settlement. The general contractor petitioned the lower court to enforce the settlement. The lower court granted appellant's petition *School Dist. v. Framlau Corp., 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974)*.



## SCHOOL DIST.V. FRAMLAU CORP., 15 PA. COMMW. 621 (PA. COMMW. CT. 1974)

- School districts possess only administrative powers expressly granted by statute or inferred by necessary implication. *Barth v. Philadelphia School District, 393 Pa. 557, 143 A. 2d 909 (1958)*; *Wilson v. Philadelphia School District, 328 Pa. 225, 195 A. 90 (1937)*. Section 2103 of article XXI of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended (Code), 24 P.S. § 21-2103, provides that the duty of the board of public education in districts of the first class shall be, inter alia, to legislate upon all matters concerning the conduct of the schools within its school district. A majority of the members of a board of school directors constitutes a quorum. Lacking a quorum present at any meeting, the board may not transact any business at such meeting. Section 422 of the Code, 24 P.S. § 4-422. *School Dist. v. Framlau Corp., 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974)*.



## SCHOOL DIST.V. FRAMLAU CORP., 15 PA. COMMW. 621 (PA. COMMW. CT. 1974)

- A board of school directors, by the affirmative vote of a majority of all its members, is authorized to enter into contracts with others. Section 508 of the Code, 24 P.S. § 5-508. A common definition of a contract is an agreement which creates an obligation. P.L.E. Contracts § 5. A settlement of litigation is a compromise agreement comprised of all the traditional elements of a contract. See *Cohen v. Sabin*, 452 Pa. 447, 307 A. 2d 845 (1973). HN4 One who contracts with a school district must, at his peril, know the extent of the power of the school district's officers in making the contract. *Charleroi Lumber Company v. Bentleyville Borough School District*, 334 Pa. 424, 6 A. 2d 88 (1939). One dealing with the president of a school board is bound to know the extent of the authority to contract given the president by the board and to know that the board of directors may repudiate any contract provision to which it has not assented. *Roland v. Reading School District*, 161 Pa. 102, 28 A. 995 (1894). School directors can bind the district they represent only when they act in their official character and in accordance with the requirements of the Code. *Jackson v. Conneautville Borough School District*, 280 Pa. 601, 125 A. 310 (1924). *School Dist. v. Framlau Corp.*, 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974).



## SCHOOL DIST.V. FRAMLAU CORP., 15 PA. COMMW. 621 (PA. COMMW. CT. 1974)

- It is the general rule that where formal action is necessary to bind a school district such a requirement must be met in order to predicate liability. In the absence of a compliance with the applicable statutory provisions pertaining to the mode by which a board of school directors may make a contract, no enforceable contract will result. *Chilli v. McKeesport School District*, 334 Pa. 581, 6 A. 2d 99 (1939). *School Dist. v. Framlau Corp.*, 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974).



## SCHOOL DIST.V. FRAMLAU CORP., 15 PA. COMMW. 621 (PA. COMMW. CT. 1974)

- Here it is evident that Attorney Horowitz's client was the Board of Public Education and not President Ross. No one contends that the Board authorized its attorney to settle, the assertion being only that President Ross, not a party to the litigation, gave such authorization. It is this feature that distinguishes this case from *Sustrik v. Jones & Laughlin Steel Corporation*, 189 Pa. Superior Ct. 47, 149 A. 2d 498 (1959). **No single member of the board is the board itself. School directors can act in an official capacity only when lawfully convened as a body.** *School Dist. v. Framlau Corp.*, 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974) *Butler v. School District of the Borough of Leighton*, 149 Pa. 351, 24 A. 308 (1892).



## HOLDING OF SCHOOL DIST.V. FRAMLAU CORP., 15 PA. COMMW. 621 (PA. COMMW. CT. 1974)

- Although there may seem to be a measure of hardship in the unfortunate position in which Framlau Corporation finds itself, it must be remembered that it arrived at the dilemma with knowledge of all the attendant facts and circumstances, and it should have realized the danger which it courted by reason of the established mandates of the law and the assumption that the Board would follow the recommendation of its president and attorney and would agree to the settlement of the lawsuit. See *Pittsburgh Paving Company, for use, v. Pittsburgh*, 332 Pa. 563, 3 A. 2d 905 (1938). *School Dist. v. Framlau Corp.*, 15 Pa. Commw. 621 (Pa. Commw. Ct. 1974).