

Millersburg Borough, Dauphin County, Pennsylvania
Resolution No. 16-11 Approving Partial Settlement

Berrysburg Borough, et al. v. Susquehanna Trust & Investment Company, Executor of the Estate of Allen Shaffer, et al. (Dauphin County Civil Docket No. 2012-CV-05846-CV)

Background. The undersigned "Political Subdivision" is a named plaintiff in the lawsuit docketed at Dauphin County civil docket number 2012-CV-05846-CV, which is referred to herein as the "Action." In the Action, the Political Subdivision and the other school district and municipal plaintiffs (collectively, the "Plaintiffs") have raised various allegations against Powell, Rogers & Speaks, Inc., a Pennsylvania business corporation referred to herein as the "Defendant," arising out of the Defendant's acquisition and operation of the "Upper Dauphin Income Tax Office" or "UDITO."

Pursuant to Order of Court dated June 23, 2015, the Defendant paid the following sums into an account held with the Dauphin County Prothonotary: (a) \$1,107,824.39 in local earned income tax (or "EIT") funds the Defendant had collected from employers and individuals operating, residing, domiciled, and working in the Plaintiffs' respective jurisdictions; (b) \$18,389.40 in miscellaneous tax funds from a Susquehanna Bank account entitled "real estate;" and (c) \$200 in miscellaneous tax funds from a Susquehanna Bank account entitled "BMS tax." All sums listed in this paragraph are collectively referred to in this Resolution as the "Trust Fund."

In addition to the Trust Fund, the Defendant had control over an account held with Mid-Penn Bank in which approximately \$10,133.72 in additional tax funds collected through the UDITO operation were deposited. Those funds have escheated to the Commonwealth of Pennsylvania, but will be recovered in due course and are referred to herein as the "Escheated Funds."

A partial settlement in the Action has been reached in principle. Per the proposed settlement, the Defendant agrees to: (a) drop any and all opposition to the immediate distribution of the Trust Fund to the Plaintiffs; (b) stipulate to a court order pursuant to which such distribution will occur; (c) provide the necessary authorization and assistance to ensure the Plaintiffs recover the Escheated Funds and that those funds are paid over to the Dauphin County Prothonotary for distribution in accordance with the "Distribution Plan" (see below); and (d) drop any and all rights it might have to appeal distribution of the Trust Fund or the Escheated Funds to the Plaintiffs. In exchange, per the terms of the proposed settlement, the Plaintiffs agree to: (a) drop the claims pending in the action against the Defendant, with the exception of claims relating to the \$122,966.58 in "Unauthorized Payments" (see below); and (b) forego initiating private criminal prosecution of the Defendant and its principals and agents.

Per the terms of the partial settlement, the Plaintiffs are not giving up any rights or remedies with respect to the \$122,966.58 in "Unauthorized Payments" that the Defendant took out of the Plaintiffs' EIT receipts or any right to continue seeking recourse from the other defendant in the case, Susquehanna Trust & Investment Company, Executor of the Estate of Allen Shaffer.

The purpose of this Resolution is to memorialize the Political Subdivision's approval of: (a) the Settlement and Release Agreement attached at Attachment 1, which memorializes the terms and conditions of the proposed partial settlement with the Defendant; and (b) the Distribution Plan attached at Attachment 2, which outlines the manner in which the Trust Fund and the Escheated Funds will be distributed to the Plaintiffs.

RESOLVED, by the governing body of the Political Subdivision that: (a) the Settlement and Release Agreement is approved; and (b) the Distribution Plan is approved.

The undersigned hereby certifies this Resolution was adopted by the Political Subdivision named below on this 27th day of July, 2016.

Millersburg Borough
Name of Political Subdivision

Alice Bowman Backs
Secretary Signature and Attestation

Sam E. Johnson
Vice President Signature