

April 27, 2018

The Honorable John D. Ferrero
Stark County Prosecuting Attorney
Stark County Office Building
110 Central Plaza South, Suite 510
Canton, Ohio 44702

SYLLABUS:

2018-011

1. A local school district board of education may enter into a settlement agreement with a property owner for payment to the board of education in exchange for the board of education dismissing its complaint or counter-complaint pending before a county board of revision.
2. A county board of revision may not require the disclosure of a settlement agreement entered into by a local school district board of education and property owner for payment to the board of education in exchange for the board of education dismissing its complaint or counter-complaint before a county board of revision as a condition to the dismissal of the board of education's complaint. Nor is a board of revision empowered to require its approval of such an agreement as a condition to a board of education dismissing its complaint.
3. A local school district board of education may stipulate to a property value that differs from the county auditor's initial valuation in exchange for the property owner making payment to the board of education. A county board of revision must approve the jointly stipulated valuation before it may go into effect.
4. A county board of revision may not require the disclosure of any payment made to a local school district board of education by a property owner in exchange for the board of education agreeing to stipulate to a property value that differs from the county auditor's initial valuation. Nor may a county board of revision consider such payment in deciding whether to accept or reject the jointly stipulated valuation.



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OPINION NO. 2018-011

The Honorable John D. Ferrero
Stark County Prosecuting Attorney
Stark County Office Building
110 Central Plaza South, Suite 510
Canton, Ohio 44702

Dear Prosecutor Ferrero:

You have requested an opinion regarding the authority of a local school district board of education (“board of education”) to enter into a settlement agreement, or other payment arrangement, with a property owner after the board of education has filed a complaint with a county board of revision. You have also asked about the authority of a county board of revision to require disclosure of the settlement agreement or payment arrangement. In answering your questions, it will first be helpful to provide background information about proceedings before a county board of revision and then to explain the two factual situations that give rise to your questions.

Background: Proceedings before a County Board of Revision

A county board of revision is a creature of statute, with only those powers expressly granted to it by statute, or necessarily implied thereby. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St. 3d 363, 367, 721 N.E.2d 40 (2000); 1990 Op. Att’y Gen. No. 90-028, at 2-107. A board of revision is composed of the county auditor, county treasurer, and a member of the board of county commissioners. R.C. 5715.02. In each county, the county auditor serves as the chief assessing officer for the valuation and taxation of real property within the county, R.C. 5715.01(B), and as the secretary of the board of revision, R.C. 5715.09. *See generally* 1990 Op. Att’y Gen. No. 90-028, at 2-105 to 2-106. At least once every six years, the auditor determines the true and taxable values of each lot or parcel of real estate, as well as the improvements on each lot, and places the taxable values of each lot on the auditor’s tax list and the county treasurer’s duplicate list for the appropriate tax year.¹ *See* R.C. 5713.01(B); R.C. 5713.03; R.C. 5715.34; *see also* R.C. 319.28. The

¹ The “true value” of a parcel of real property is the parcel’s fair market value or the price at which the property changed hands in an arm’s-length transaction. *See* 16B Ohio Admin. Code 5703-25-05(A); R.C. 5713.03. The “taxable value” of a parcel of real property is a percentage of the parcel’s true value, established by rule of the Tax Commissioner, not to exceed thirty-five percent. *See* R.C. 5715.01(B); *see also* 16B Ohio Admin. Code 5703-25-05(B) (establishing the

county auditor acts under the direction and supervision of the Tax Commissioner. R.C. 5715.01(B); *see also* R.C. 5713.01(B) (“[t]he auditor shall assess all the real estate situated in the county at its taxable value in accordance with [R.C. 5713.03, R.C. 5713.31, and R.C. 5715.01] and with the rules and methods applicable to the auditor’s county adopted, prescribed, and promulgated by the tax commissioner”).

A property owner or board of education, among others, may file a complaint challenging the auditor’s valuation of particular parcels of property. R.C. 5715.19(A)(1). A complaint shall be filed with the county auditor no later than the thirty-first day of March following the tax year in question or the final date of collection for the first half of real and public utility property taxes for the current tax year, whichever is later. *Id.* The county auditor then presents all complaints filed with the auditor’s office to the county board of revision. *Id.* The board of revision shall hear and render its decision on the complaint within ninety days of its filing, or within ninety days of the filing of a properly submitted counter-complaint under R.C. 5715.19(B).² R.C. 5715.19(C).

Following the hearing, a board of revision may increase or decrease any valuation set by the county auditor that is the subject of a complaint, or the board may order a reassessment of the property’s valuation. *See* R.C. 5715.11. The decision of a board of revision to increase or decrease a parcel’s valuation should be supported by sufficient competent and probative evidence. *See Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St. 3d 564, 566-567, 740 N.E.2d 276 (2001); *see also Myers v. Keith*, 2d Dist. No. 22826, 2009-Ohio-3435, 2009 Ohio App. LEXIS 2954, at ¶ 18. A board of revision is required to give notice and an opportunity to be heard to an affected property owner before the board may increase the valuation of the owner’s property. R.C. 5715.12. After making its decision, a board of revision certifies its action to the county

current taxable value at thirty-five percent of the true value of each parcel of real property and the improvements thereon). For the purpose of this opinion, when we refer to the valuation of a parcel of real property, we are referring to the parcel’s true (fair market) value, unless otherwise noted.

² In this opinion, we use the term “counter-complaint” to refer to a complaint that is filed under R.C. 5715.19(B) in response to a complaint filed under R.C. 5715.19(A). *See C.I.A. Properties v. Cuyahoga Cty. Auditor*, 89 Ohio St. 3d 363, 365, 731 N.E.2d 680 (2000). “[T]he purpose of the counter-complaint is to support or object to the amount of the alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a *previously filed complaint* or objecting to the current valuation.” *Id.* at 365-366 (emphasis in original) (citation omitted). “The sole function of the counter-complaint, therefore, is to address the issues raised in a complaint filed pursuant to R.C. 5715.19(A).” *Id.* at 366. “Viewed in this manner, the counter-complaint serves as the functional equivalent of an answer to a civil complaint.” *Id.* However, a counter-complaint will independently create jurisdiction in a county board of revision as long as the original complaint filed under R.C. 5715.19(A) is jurisdictionally sufficient. *See Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA No. 2016-156, 2016 Ohio Tax LEXIS 2698, at *8 (Dec. 13, 2016).

auditor so that the county auditor may make the necessary corrections to the tax list and duplicate list. R.C. 5715.14. A board of revision also certifies its decision, by certified mail, to the property owner whose property is the subject of the complaint and to the complainant. *See* R.C. 5715.20(A).

A property owner or other person may appeal the decision of a board of revision to the Board of Tax Appeals. R.C. 5717.01. A property owner has the additional option to appeal a board of revision decision to the court of common pleas of the county in which the board of revision sits, as an alternative to appealing to the Board of Tax Appeals. R.C. 5717.05. The time to appeal a board of revision's decision to the Board of Tax Appeals or common pleas court begins to run with the mailing of the notice of the board of revision's decision. R.C. 5715.20(A). The Board of Tax Appeals and court of common pleas may consider additional evidence to determine the taxable value of the property whose valuation was complained of before the board of revision. *See* R.C. 5717.01; R.C. 5717.05. A decision of the Board of Tax Appeals may be appealed to the appropriate court of appeals. If the appeal "involves a substantial constitutional question or a question of great general or public interest" and the Ohio Supreme Court approves a petition to transfer jurisdiction, the decision may be appealed directly to that court. *See* R.C. 5717.04. A decision of a common pleas court may be appealed as other cases are ordinarily appealed. R.C. 5717.05. Authority to establish real property value for taxation purposes that differs from a county auditor's initial valuation, therefore, is vested in county boards of revision, the Board of Tax Appeals, courts of common pleas, courts of appeals, and the Ohio Supreme Court.

Two Situations: Dismissal (*Situation 1*) and Stipulation (*Situation 2*)

In your letter, you draw our attention to two situations that may occur when a complaint is pending before a county board of revision.

In the first situation, a county auditor values a parcel of property at \$400,000 for a particular tax year. A board of education, believing the valuation of the property to be too low, files a complaint with the county board of revision to increase the valuation to \$550,000. The property owner receives notice of the complaint, and, believing the property valuation to be too high, files a counter-complaint to decrease the valuation to \$350,000. After negotiations, the board of education and property owner reach a settlement agreement. The board of education agrees to dismiss its complaint pending before the board of revision in exchange for a one-time payment of \$5,000 to the board of education. The property owner pays the board of education \$5,000 in exchange for the board of education dismissing its complaint. The initial property valuation of \$400,000 set by the county auditor remains in place.

You ask two questions about this first example:

1. May a board of education agree to dismiss its complaint before a county board of revision in exchange for payment³ from the property owner?

³ In your letter, you raise the possibility of a board of education receiving "direct or indirect" payments from a property owner. After further conversations with your office, it was

2. May a county board of revision require the disclosure, or the board of revision's approval, of a settlement agreement in which a board of education agrees to dismiss its complaint pending before the county board of revision in exchange for payment from the property owner?

In the second situation,⁴ a county auditor values a parcel of real property at \$400,000 for a particular tax year. The board of education, believing the valuation to be too low, files a complaint with the county board of revision to increase the property valuation to \$550,000. The property owner receives notice of the complaint, and, believing the property valuation to be too high, files a counter-complaint to decrease the valuation to \$350,000. After negotiations, the board of education and property owner reach an understanding. The board of education agrees to stipulate to a property value of \$450,000, which is in between the value that the board of education sought (\$550,000) and the value the property owner sought (\$350,000), and higher than the county auditor's initial valuation (\$400,000). In exchange for this stipulation, the board of education agrees to accept a payment of \$2,500 from the property owner, provided the board of revision approves the joint stipulation. Once the board of revision approves the joint stipulation of value, the property valuation will increase from \$400,000 to \$450,000, and the property owner will pay \$2,500 to the board of education.

You ask two questions about the second situation:

1. May a board of education and property owner enter into an agreement in which the board of education and property owner jointly stipulate to a property value that differs from the county auditor's initial valuation, on the condition that the property owner will make a payment to the board of education, provided the county board of revision accepts the jointly stipulated value?
2. May a county board of revision require the disclosure of any payment that a property owner has agreed to make to a board of education in exchange for the board of education stipulating to a property value that differs from the county

explained that a "direct payment" is a monetary or non-monetary gift made to a board of education by a property owner. An example of a direct payment is a check written to a board of education. An "indirect payment" is a monetary or non-monetary gift made to a board of education through an intermediary. An example of an indirect payment is a corporate property owner establishing a charity organized under 26 U.S.C.A. § 501(c)(3) (West 2011 & Supp. 2017) whose funds are dedicated solely to the benefit of the board of education. For the purpose of this opinion, it is immaterial whether a board of education receives "direct" or "indirect" payments from a property owner. Consequently, throughout this opinion, we will use the term "payment" to encompass both kinds of payments.

⁴ In either situation, it is immaterial to the conclusions reached in this opinion whether a board of education files a complaint under R.C. 5715.19(A) or a counter-complaint under R.C. 5715.19(B).

auditor's initial valuation, prior to the board of revision accepting or rejecting the stipulated property value?

The above scenarios present related, but distinct, legal issues. Accordingly, we will address each scenario and its respective questions in turn.

First Situation—Question One: Dismissal of Complaint in Exchange for Payment to Board of Education

Your first question asks whether a board of education may agree to dismiss its complaint pending before a county board of revision in exchange for accepting payment from a property owner whose property is the subject of the complaint.

A board of education, like a county board of revision, is a creature of statute and has only those powers expressly granted to it, or necessarily implied, by law. *See Wolf v. Cuyahoga Falls City School Dist. Bd. of Edn.*, 52 Ohio St. 3d 222, 223, 556 N.E.2d 511 (1990); 2014 Op. Att’y Gen. No. 2014-016, at 2-133. Management and control of a school district are vested in a board of education. R.C. 3313.47. A board of education is a “body politic and corporate” and has the express authority to sue and be sued. R.C. 3313.17.

A board of education also has the express power to file a complaint with the appropriate county board of revision to challenge the valuation of any parcel of real property that appears on the tax list for the current tax year when the school district has any territory in the county, *see* R.C. 5715.19(A)(1), and whatever powers that are granted to it by virtue of its status as a complainant. A complainant before a county board of revision has the power to voluntarily dismiss a complaint at any time prior to the hearing, as long as the dismissal does not prejudice the rights of other parties to the proceeding. *See May Dept. Stores Co. v. Bd. of Revision of Cuyahoga Cty.*, 49 Ohio St. 2d 183, 188, 360 N.E.2d 697 (1977). The Ohio Supreme Court has stated that, absent a statute or rule governing the dismissal of a complaint before a county board of revision, the prevailing rules of civil procedure shall apply. *See id.* at 185-186. The court explained the applicable rule, noting that

[t]he procedure generally to be followed by the courts of this state in the exercise of civil jurisdiction is that an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time prior to trial, unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by the defendant.

Id. at 186 (citing Ohio R. Civ. P. 41(A)(1)(a)). Other courts have adopted the reasoning of *May Dept. Stores*. *See Stark v. Bd. of Revision of Cuyahoga County*, No. 39258, 1980 Ohio App. LEXIS 13687, at *11 (Cuyahoga County Jan. 4, 1980) (“*May Dept. Stores v. Bd. of Revision* ... determined that the standards of Ohio Civ. R. 41 should apply in the dismiss[al] of actions before administrative agencies”); *see also Ganley v. Mazda Motor of Am., Inc.*, 367 F. App’x 616, at 624 (6th Cir. 2010) (“[i]n *May Department Stores*, the Ohio Supreme Court noted the absence of an applicable statute or administrative rule and turned ‘to the practice and rules of courts’ – and, in particular, Ohio Rule of Civil Procedure 41(A) – to reach its holding that a petitioner had the absolute right to voluntarily

dismiss without prejudice his proceeding before a county tax board. The [Ohio Motor Vehicle Dealers Act] says nothing about voluntary dismissals; nor, it appears, does any other section of the Ohio Revised Code or Administrative Code dealing with the [Ohio Motor Vehicle Dealers Board]. Thus, following *May Department Stores*, we apply the standard reflected in Ohio Rule of Civil Procedure 41(A) by default” (citing *May Dept. Stores, supra*). Compare, e.g., *Meadows Dev., L.L.C. v. Champaign Cty. Bd. of Revision*, 124 Ohio St. 3d 349, 2010-Ohio-249, 922 N.E.2d 209, at ¶¶ 14-15 (where R.C. 5715.20 articulated the certification requirements for purposes of appealing a decision of a county board of revision, there was no reason to look to the Ohio Rules of Civil Procedure to discern the certification requirements because there was “no gap to fill”).

Having reviewed the relevant express powers of a board of education, the question is whether dismissing a complaint pending before a county board of revision in exchange for payment from a property owner is a reasonable method of exercising the express powers of a board of education. When an official or board is given express authority or is commanded to perform a particular act by statute but is not given the manner in which to carry out that act, then the official or board has the authority to determine any reasonable manner or method for carrying out the authority or command. See *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, at 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”); see also *State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365 (1960) (“[w]here a statute clearly confers power to do a certain thing without placing any limitation as to the manner or means of doing it, and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption is that it should be performed in a reasonable manner *not in conflict with any law of the state*”) (emphasis in original). For example, where the General Assembly has granted a court the power to appoint or hire personnel and not imposed any limitation on such appointment or hiring, that court “may exercise its statutory powers to appoint and hire personnel ... in any reasonable manner.” See 1992 Op. Att’y Gen. No. 92-009, at 2-28.

By filing a complaint or counter-complaint with a county board of revision pursuant to R.C. 5715.19, a board of education engages in litigation before a quasi-judicial body. *Swetland Co. v. Evatt*, 139 Ohio St. 6, 22, 37 N.E.2d 601 (1941) (citation omitted); see also *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St. 3d 340, 2015-Ohio-2571, 37 N.E.3d 1207, at ¶ 12; R.C. 3313.17 (a board of education has the express authority to sue and be sued). Implicit in the authority to engage in litigation, or to sue and be sued, is the power to make strategic and tactical decisions affecting the course of the litigation. Litigation decisions may include what facts should be stipulated to, when to make an objection at hearing or trial, which evidence to reply upon in proving a case, and which motions to file.

An important decision a party may make during litigation is when, or whether, to settle.⁵ The power to settle is inherent in the power to sue and be sued. “[T]he power of a public body to settle

⁵ “Settlement” is defined as “[a]n agreement ending a dispute or lawsuit” and may also be referred to as a “settlement agreement.” See *Black’s Law Dictionary* 1582 (10th ed. 2014). See

litigation is incident to and implied from its power to sue and be sued.” *Abramson v. Florida Psychological Assn.*, 634 So. 2d 610, 612 (Fla. 1994). *Accord Columbus Gas & Fuel Co. v. City of Columbus*, 42 F. Supp. 762, at 769 (S.D. Ohio 1941) (“[i]t is elementary that the mere fact that a municipal corporation may sue and be sued confers upon it also the power to compromise and settle both threatened and pending suits”); *Cleveland & Pittsburgh RR. Co. v. City of Cleveland*, 15 Ohio C.C. (N.S.) 193, at 210 (Cir. Ct. Cuyahoga County 1910) (“[t]he power to compromise and settle is doubtless inherent in all corporations as a corollary of the powers to sue and to [be] sued”). “[T]he power to compromise grows out of and is incident to the power to sue and be sued. This power embraces the power to finish litigation, decide how far it shall be carried, and when and in what manner it may end.” *Oakman v. Eveleth*, 163 Minn. 100, 102, 203 N.W. 514 (1925). Moreover, Ohio public policy favors settlements of legal disputes between parties. *See Infinite Sec. Solutions, L.L.C. v. Karam Properties II*, 143 Ohio St. 3d 346, 2015-Ohio-1101, 37 N.E.3d 1211, at ¶ 16; *Fulmer v. Insura Property & Casualty Co.*, 94 Ohio St. 3d 85, 94, 760 N.E.2d 392 (2002). The authority to settle includes the discretion to establish the terms upon which a settlement is effected. *See Bd. of Supervisors v. Bowen*, 4 Lans. 24, at 31 (N.Y. Gen. Term 1871).

Accordingly, we conclude that settlement is a reasonable method to carry out a board of education’s express power to sue and be sued. A board of education may reasonably set the conditions or terms on which litigation is terminated. The authority to establish the terms upon which a board of education will dismiss its complaint is inherent in the board of education’s express power to sue and be sued. In short, a board of education has the authority to settle litigation and to accept payment from a property owner in exchange for the board of education voluntarily dismissing its complaint or counter-complaint before a county board of revision as a reasonable exercise of the board of education’s express powers to sue and be sued under R.C. 3313.17.⁶

also Infinite Sec. Solutions, L.L.C. v. Karam Properties II, 143 Ohio St. 3d 346, 2015-Ohio-1101, 37 N.E.3d 1211, at ¶ 16 (“[a] settlement agreement is a contract designed to terminate a claim by preventing or ending litigation”).

⁶ A party may voluntarily dismiss its complaint before a county board of revision so long as the dismissal does not prejudice the rights of other parties. *See May Dept. Stores Co. v. Bd. of Revision of Cuyahoga Cty.*, 49 Ohio St. 2d 183, 188, 360 N.E.2d 697 (1977). Whether a particular dismissal causes prejudice to another party before a county board of revision is a factual question beyond the scope of an Attorney General opinion. Presumably, however, if a board of education and property owner are the sole parties to a complaint before a board of revision and enter into a settlement agreement for payment to the board of education in exchange for the board of education’s dismissal of its complaint, neither party will be prejudiced under these circumstances in light of the parties’ mutually agreed-upon settlement.

First Situation—Question Two: Disclosure of Settlement Agreement to Board of Revision or Approval of Settlement Agreement by Board of Revision as a Condition to Dismissing Complaint

Your second question asks whether, if a board of education may enter into a settlement agreement with a property owner for payment to the board of education in exchange for the board of education dismissing a complaint or counter-complaint before a county board of revision, a county board of revision may require disclosure or the board of revision's approval of the agreement as a condition for the board of education to be able to dismiss its complaint.

In *May Dept. Stores*, the Ohio Supreme Court stated that “the power of a commission to refuse the dismissal of a proceeding on motion of the one instituting it could be no greater than the power which at that time might have been exercised in similar circumstances by judicial tribunals.” *May Dept. Stores v. Bd. of Revision of Cuyahoga Cty.*, 49 Ohio St. 2d 183, 185-186, 360 N.E.2d 697 (1977) (citing *Jones v. Securities & Exchange Comm.*, 298 U.S. 1 (1936)). The court went on to favorably note the common law rule “that the right to dismiss is unqualified unless the dismissal would legally prejudice the defendants in some other way than by future litigation of the same kind.” *Id.* (citing *Jones, supra*, at 21-22). A board of education's filing of a notice of dismissal with a county board of revision is sufficient to divest the board of revision of jurisdiction. See *Ganley v. Mazda Motor of Am., Inc.*, 367 F. App'x 616, at 624 (6th Cir. 2010).

A county board of revision, moreover, may not penalize a party for failing to provide requested documents, including a settlement agreement. “[A] board of revision has no authority to impose a sanction for a complainant's failure to submit additional information.” *State ex rel. Firstenergy Corp. v. Lake Cty. Bd. of Revision*, 137 Ohio App. 3d 550, 555, 739 N.E.2d 359 (Lake County 2000). The Ohio Supreme Court has determined that “no statute or constitutional provision requires a complainant to provide additional information [to a county board of revision] beyond the filing of the complaint.” *Kalmbach Wagner Swine Research Farm v. Bd. of Revision of Wyandot Cty.*, 81 Ohio St. 3d 319, 324, 691 N.E.2d 270 (1998). Thus, a party's failure or refusal to produce documents requested by a county board of revision is not a valid ground for the board of revision to dismiss a complaint. *Kohl's Ill., Inc. v. Marion Cty. Bd. of Revision*, 140 Ohio St. 3d 522, 2014-Ohio-4353, 20 N.E.3d 711, at ¶ 28 (“*Kalmbach Wagner* recognizes that the grounds for a [board of revision] to dismiss are, apart from jurisdictional defects, very limited. The court recognized that failure to prosecute can be a ground for dismissal ... But failure to produce requested documents in *Kalmbach Wagner* itself was not a valid ground for dismissal”).

A county board of revision has the authority to adopt administrative rules to manage the complaints that are filed with the board with respect to procedure before the board. Specifically, R.C. 323.66(B)(1) states that

[a] county board of revision may adopt rules as are necessary to administer cases subject to its jurisdiction under Chapter 5715. or adjudicated under sections 323.65 to 323.79 of the Revised Code, as long as the rules are consistent with rules adopted by the tax commissioner under Chapter 5715. of the Revised Code.

Rules adopted by a board shall be limited to rules relating to hearing procedure, the scheduling and location of proceedings, case management, and practice forms. (Emphasis added.)

As a creature of statute, a county board of revision's authority to promulgate rules is limited to the areas granted to it by R.C. 323.66(B)(1). In light of the Ohio Supreme Court's holding in *Kalmbach Wagner* that a board of revision may not require a complainant to provide additional documents or information beyond the filing of a complaint, a board of revision is without authority to adopt a rule requiring the provision of any existing settlement agreement between a property owner and board of education as a condition for a board of education's voluntary dismissal of its complaint. Thus, unless the dismissal of a board of education's complaint would prejudice the rights of another party, and in the absence of a governing statute or regulation to the contrary, a county board of revision should grant the board of education's voluntary dismissal as a matter of course.

In sum, no statute or regulation gives a board of revision the authority to require disclosure of a settlement agreement for payment to a board of education in exchange for the board of education dismissing its complaint.⁷ Nor does any statute or regulation grant a board of revision the authority to require the board of revision's approval of such an agreement as a condition for the board of education's dismissal of the complaint.⁸ As discussed above, a board of education has the authority to

⁷ It should be noted that any settlement agreement entered into by a public entity is a public record pursuant to R.C. 149.43, even when the settlement agreement contains a confidentiality provision. *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St. 3d 134, 136-137, 684 N.E.2d 1222 (1997) (“[a] public entity cannot enter into enforceable promises of confidentiality regarding public records”); *State ex rel. Sun Newspapers v. Westlake Bd. of Educ.*, 76 Ohio App. 3d 170, 601 N.E.2d 173 (Cuyahoga County 1991). Any settlement agreement entered into by a board of education is a public record subject to disclosure under R.C. 149.43. *State ex rel. Kinsley v. Berea Bd. of Educ.*, 64 Ohio App. 3d 659, 662, 582 N.E.2d 653 (Cuyahoga County 1990) (“[a]ny record that is kept by any governmental unit, including any school district unit, unless specifically exempted or prohibited from release by any state or federal law, must be made available for inspection to any member of the general public”). Moreover, “settlement agreements entered into by a governmental unit are public records and are not trial preparation records pursuant to R.C. 149.43(A)(4).” *Id.* at 663. Accordingly, any settlement agreement between a board of education and property owner made in exchange for the board of education dismissing its complaint before a county board of revision is a public record pursuant to R.C. 149.43.

⁸ The Board of Tax Appeals, the state board that hears appeals from county boards of revision, has adopted a rule that allows an appellant to dismiss an appeal under R.C. 5717.01, at any time prior to the hearing, without consent of the Board of Tax Appeals. The rule states:

The board may dismiss an appeal upon the filing of an appellant's voluntary dismissal at any time prior to the commencement of the hearing. After commencement of the hearing, a dismissal may be granted with the consent of all

enter into this kind of settlement agreement with a property owner. Accordingly, we conclude that a board of revision may not require disclosure or the board of revision's approval of a settlement agreement as a condition to a board of education's voluntary dismissal of its complaint.

Situation Two—Question One: Arrangement for Stipulated Property Value in Exchange for Payment to Board of Education

Regarding the second situation, you ask, first, whether a board of education may enter into an agreement with a property owner in which they jointly stipulate to a property value that differs from the county auditor's valuation on the condition that the property owner will make a payment to the board of education, provided the board of revision approves the stipulated value.

We conclude that, even as a board of education may agree to accept payment in exchange for dismissing a complaint pending before a board of revision, a board of education may also stipulate to a property value that differs from the county auditor's valuation in exchange for the owner paying the board of education. Specifically, a board of education may agree to accept payment from a property owner in exchange for stipulating to a particular property value as a reasonable way to carry out the board of education's express powers to sue and be sued. R.C. 3313.17. The power to sue and be sued includes the authority to stipulate, or agree, to various facts, evidence, and other issues that arise during the course of litigation. *See In re Appropriation for Highway Purposes*, 175 Ohio St. 277, 281, 194 N.E.2d 139 (1963) (“parties to litigation may, by their counsel, stipulate or agree to waive the constitutional guaranty of trial by jury and submit issues of fact to the court in proceedings brought by the state to acquire private property for public use”). Parties to a judicial proceeding may freely make stipulations regarding matters of facts, form, and procedure, and such stipulations are agreements that are binding on the parties to the stipulation without consideration. *See Black's Law Dictionary* 1641 (10th ed. 2014) (a “stipulation” is a “voluntary agreement between opposing parties concerning some relevant point”); *Arrington v. Florida*, 233 So. 2d 634, 636 (Fla. 1970) (“[a] stipulation is a voluntary agreement between opposing counsel concerning the disposition of some relevant point so as to obviate the need for proof or to narrow the range of litigable issues”); *see also* 1

of the parties and the approval of the board. The dismissal of an appeal is with prejudice.

16B Ohio Admin. Code 5717-1-18(A) (2017-2018 Supplement). Despite the use of the word “may” in the rule, the Board of Tax Appeals has maintained that “an appellant has the ability to unilaterally dismiss its appeal at any time prior to hearing without leave of this board.” *Gesse Properties of Ohio, LLC v. Clark Cty. Bd. of Revision*, BTA No. 2007-Z-1241, 2008 Ohio Tax LEXIS 1938, at *7 (Oct. 28, 2008) (citing *Gates Mills Club Dev. Co. v. Cuyahoga Cty. Bd. of Revision*, 64 Ohio St. 3d 198, 594 N.E.2d 680 (1992)). *Accord Sandy Valley Local School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, BTA No. 2012-L-3034, 2013 Ohio Tax LEXIS 3198, at *5 n.3 (“[t]his board has previously found the [board of revision's] disregard of the parties' voluntary dismissals, filed prior to hearing, was improper”).

Restatement 2d of Contracts, Section 94, Comment *a* (1981) (“[s]tipulations with respect to matters of form and procedure serve the convenience of the parties to litigation and often serve to simplify and expedite the proceeding. In some cases they are supported by the policy of favoring compromise in order to reduce the volume of litigation. Hence they are favored by the courts and enforced without regard to consideration”). *Compare, e.g., Thompson v. Thompson*, 196 Ohio App. 3d 764, 2011-Ohio-6286, 965 N.E.2d 377, at ¶ 69 (Franklin County) (“[parties] may not stipulate to what the law requires. Consequently, stipulations to a question of law do not bind courts”). Stipulations are common tools that litigating parties employ in carrying out their powers to sue and be sued. Thus, it follows that a property owner and board of education may stipulate to the value of the owner’s property in exchange for payment to the board of education.⁹

It should be noted that a board of education has no authority by itself to change the valuation of a parcel of real property from the county auditor’s initial valuation, even with a stipulation of value from the property owner. Authority to determine the valuation of a parcel of real property for taxation purposes rests, in the first instance, with the county auditor. R.C. 5713.01; R.C. 5713.03. A county auditor assesses real property in accordance with the Revised

⁹ Moreover, a board of education enjoys other express powers that provide it the authority to accept such a payment. First, a board of education has the power to accept conditional gifts:

By the adoption of a resolution, a board of education *may accept any bequest made to it by will or may accept any gift or endowment upon the conditions and stipulations contained in the will or connected with the gift or endowment*. For the purpose of enabling the board to carry out the conditions and limitations upon which a bequest, gift, or endowment is made, it may make all rules required to fully carry them into effect. No such bequest, gift, or endowment shall be accepted by the board if the conditions remove any portion of the public schools from the control of the board.

R.C. 3313.36(A) (emphasis added). For example, a board of education has the power under R.C. 3313.36(A) to accept buildings from the federal government by rent-free loan on the condition that the board maintain the buildings during the period of the loan. 1961 Op. Att’y Gen. No. 2658, p. 679, at p. 680; see also 1962 Op. Att’y Gen. No. 3246, p. 686 (syllabus) (a board of education may, pursuant to R.C. 3313.17 and R.C. 3313.36, accept a donation of a sum of money whose use is restricted to the purchase of equipment for interscholastic athletic programs conducted by the board). Second, as discussed above, a board of education has the authority to file complaints with a county board of revision challenging the valuation of a parcel of real property. R.C. 5715.19(A), (B). These two express powers, taken together, authorize a board of education to accept payment in exchange for stipulating to a property value that is different from the county auditor’s initial valuation. Accordingly, even if a board of education’s power to sue and be sued does not extend so far as to encompass accepting payment for stipulating to a particular property value, a board of education is authorized to accept such payment under its express powers to receive conditional gifts and file a complaint with a county board of revision.

Code and under rules promulgated by the Tax Commissioner. *See* R.C. 5715.01(A), (B); *see also* R.C. 5713.01(B). After the auditor has made the necessary valuations, a board of revision may, upon complaint, “revise assessments of real property for taxation.” R.C. 5715.01(B). A board of revision “may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.” R.C. 5715.11. On appeal, a reassessment of the county auditor’s initial valuation may also be ordered by the Board of Tax Appeals, court of common pleas, court of appeals, or Ohio Supreme Court. *See* R.C. 5703.02; R.C. 5717.01; R.C. 5717.03; R.C. 5717.04; R.C. 5717.05. A board of education, however, has no statutory authority to alter a county auditor’s property valuation. Accordingly, although a board of education and property owner may jointly stipulate to a particular valuation of the owner’s property in exchange for payment to the board of education, a county board of revision must approve of the stipulated valuation for the new valuation to go into effect. With that caveat, we answer this first question in the affirmative.

Second Situation—Question Two: Disclosure of Payment Arrangement to Board of Revision and Board of Revision’s Authority to Consider Payment Arrangement in Approving or Rejecting Stipulation

Your second question under the second situation asks whether a county board of revision may require disclosure of any payment arrangement between a property owner and board of education for a stipulated valuation, prior to the board of revision approving or rejecting the stipulated value. Implied by your question is whether a board of revision may consider the payment arrangement between a property owner and board of education when deciding whether to approve or reject the parties’ stipulated value.

As stated above, a county board of revision is a creature of statute and has only those powers expressly granted to it by law, or necessarily implied thereby. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St. 3d 363, 367, 721 N.E.2d 40 (2000); 1990 Op. Att’y Gen. No. 90-028, at 2-107. “The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.” R.C. 5715.10. “[W]hatever changes in valuations the board of revision desires to make, it must make in accordance with the laws governing the valuation of real property, and subject to the laws regulating and restricting the limit of valuation.” *State ex rel. Atty. Gen. v. Morris*, 63 Ohio St. 496, 512, 59 N.E. 226 (1900).

The Ohio Revised Code and Administrative Code govern the manner in which real property is valued. Each county auditor determines the true and taxable value of a parcel of land “from the best sources of information available ... and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner.” *See* R.C. 5713.03. In turn, the Tax Commissioner directs and supervises the valuation of all real property. R.C. 5715.01(A). The Tax Commissioner is directed to “adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values,” which rules “shall prescribe methods of determining the true value and taxable value of real property.” R.C. 5715.01(A), (A)(1).

According to the rules promulgated by the Tax Commissioner, it is the duty of the county auditor to value and appraise each parcel of land and improvements to the land such that “when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.” 16B Ohio Admin. Code 5703-25-07(B). In determining the true value of a parcel of land, factors to be considered include “not only the present use of the land but also its highest and best probable legal use consistent with existing zoning and building regulations.”¹⁰ See 16B Ohio Admin. Code 5703-25-11(A) (2017-2018 Supplement). To determine the highest and best probable legal use of the land, the following factors should be considered: the present improvements to the land, the demand and supply of land, the demand and supply of land for such use, financing method, the length of time until developed and the cost of development. *Id.* The Tax Commissioner has also provided a list of other factors, tending to influence the market value of land, which should be considered in valuing and appraising parcels of land, including “size, shape, topography, soil and subsoil, drainage, utility connections, street or road, land pattern, neighborhood type and trend, amenities, zoning, restrictions, easements, hazards, etc.” 16B Ohio Admin. Code 5703-25-11(B) (2017-2018 Supplement). Among the factors that may be properly considered for purposes of real property valuation, the courts have consistently noted that “the best evidence of true value for real estate taxation purposes is a recent sale in an arm’s-length transaction between a willing seller and a willing buyer.” *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision*, 5th Dist. No. 2014CA00162, 2015-Ohio-2290, 2015 Ohio App. LEXIS 2198, at ¶ 20; see also *Zazworsky v. Licking Cty. Bd. of Revision*, 61 Ohio St. 3d 604, 605, 575 N.E.2d 842 (1991).¹¹

Other factors shall be used and considered in estimating the true value of each parcel of real property and its improvements, “in conjunction with the actual viewing of the property by the appraiser.” See 16B Ohio Admin. Code 5703-25-09. These factors are limited to physical and

¹⁰ Land devoted exclusively to agricultural use is valued in accordance with the land’s current use, rather than its highest and best probable legal use. See R.C. 5713.03; R.C. 5713.31; R.C. 5715.01(A); see also R.C. 5713.30 (defining “land devoted exclusively to agricultural use”). Nevertheless, a county auditor is required to determine the true value of land devoted exclusively to agricultural use in accordance with rules promulgated by the Tax Commissioner, including the consideration of factors listed in 16B Ohio Admin. Code 5703-25-09(C). See 1977 Op. Att’y Gen. No. 77-020, at 2-70 (county auditor shall consider agricultural land factors listed under prior analogous rule 5705-3-05(C) in determining the agricultural land’s true value).

¹¹ In determining the true value of land, a county auditor may consider any or all of three recognized approaches to value: the market data approach, the income approach, or the cost approach. See 16B Ohio Admin. Code 5703-25-07(D); see also 16B Ohio Admin. Code 5703-25-05 (defining each approach). Land may also be valued by four principal methods: the market data method (comparative process), the allocation method, the land residual method, or the development method. See 16B Ohio Admin. Code 5703-25-11(C) (describing each method). Except in unusual circumstances, the market data method should be used. 16B Ohio Admin. Code 5703-25-11(C)(1).

geographic characteristics of a parcel of land, including number of acres, lot or tract frontage and depth, sidewalk, shape of lot or tract, neighborhood trend (improving, static, declining, or blighted), corner influence, alley influence, and land use. *See id.* In estimating the true value of each parcel of real property and its improvements, building construction features may also be considered. These building construction features include the type of building construction, grade, age, condition, foundation, basement area, roofing, air conditioning, plumbing, porches and additions, and fireplace. *See* 16B Ohio Admin. Code 5703-25-09(D). *Compare* 16B Ohio Admin. Code 5703-25-09(F)(5) (“[t]he county auditor is authorized to use any additional information for property or appraisal records when the auditor deems it necessary. In the event the auditor uses other approaches of estimating true value than the cost approach, the auditor’s reasonings and calculations should show on the appraisal record”). The factors that may be considered in estimating the true value of each parcel of real property, therefore, are bound by physical and geographic characteristics, as well as the physical characteristics of the buildings on the property.

A county board of revision may not change a valuation of property except in accordance with Ohio statutes and regulations. *See* R.C. 5715.10. In evaluating a county auditor’s initial valuation of a parcel of real property, a board of revision shall use the same factors that a county auditor considers when the auditor makes the initial valuation. *See* R.C. 5715.01(A), (B); R.C. 5715.10. An agreement between a property owner and board of education for a payment to the board of education in exchange for the board of education agreeing to a particular property value is not among the factors enumerated under Ohio law that may be considered in determining real property valuation. Nor does such an agreement amount to an “arm’s length transaction between a willing seller and willing buyer” because the payment that the property owner gives to the board of education is not for the sale of real property, as contemplated by Ohio law. *See* R.C. 5713.03. Accordingly, in deciding whether to approve or reject a stipulated valuation, a county board of revision may not require the disclosure of any payment between a property owner and board of education, nor may it consider the payment as part of its decision to approve or reject the stipulated valuation.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A local school district board of education may enter into a settlement agreement with a property owner for payment to the board of education in exchange for the board of education dismissing its complaint or counter-complaint pending before a county board of revision.
2. A county board of revision may not require the disclosure of a settlement agreement entered into by a local school district board of education and property owner for payment to the board of education in exchange for the board of education dismissing its complaint or counter-complaint before a county board of revision as a condition to the dismissal of the board of education’s complaint. Nor is a board of revision empowered to require its

approval of such an agreement as a condition to a board of education dismissing its complaint.

3. A local school district board of education may stipulate to a property value that differs from the county auditor's initial valuation in exchange for the property owner making payment to the board of education. A county board of revision must approve the stipulated valuation before it may go into effect.
4. A county board of revision may not require the disclosure of any payments made to a local school district board of education by a property owner in exchange for the board of education agreeing to stipulate to a property value that differs from the county auditor's initial valuation. Nor may a county board of revision consider such payment in deciding whether to accept or reject the jointly stipulated valuation.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

MICHAEL DEWINE
Ohio Attorney General