

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE KATIE J. MUTH	:	
	:	
v.	:	No. _____
	:	
PUBLIC SCHOOL EMPLOYEES’	:	
RETIREMENT BOARD,	:	
CHRISTOPHER SANTAMARIA, IN HIS	:	
OFFICIAL CAPACITY AS CHAIRMAN,	:	
GLEN R. GRELL IN HIS OFFICIAL	:	
CAPACITY AS EXECUTIVE DIRECTOR, and	:	
THE PUBLIC SCHOOL EMPLOYEES’	:	
RETIREMENT SYSTEM,	:	

NOTICE TO DEFEND

TO: THE PUBLIC SCHOOL EMPLOYEES’ RETIREMENT BOARD
 c/o Jackie Lutz, Esq.
 5 N 5th Street
 Harrisburg, PA 17101-1905
jlutz@pa.gov

c/o Bill Sullivan, Esq.
 1200 Seventeenth Street, NW
 Washington, DC 20036 USA
wsullivan@pillsburylaw.com

c/o Suzanne Dugan, Esq.
 1100 New York Ave NW Fifth Floor
 Washington, DC 20005
sdugan@cohenmilstein.com

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street Harrisburg, PA 17101
(717) 232-7536

AVISO USTED HA SIDO DEMANDADO/A EN CORTE.

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/s/ Terry Mutchler

Terry Mutchler (#308052)
OBERMAYER, REBMANN,
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1500 Market Street
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Philadelphia, PA 19102-2101
T 215.665.3000
F 215.665.3165

Dated: June 8, 2021

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GLEN R. GRELL IN HIS OFFICIAL :
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RETIREMENT SYSTEM, :

NOTICE TO DEFEND

TO: CHRISTOPHER SANTAMARIA, IN HIS OFFICIAL CAPACITY AS
CHAIRMAN OF THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT
BOARD
c/o Jackie Lutz, Esq.
5 N 5th Street
Harrisburg, PA 17101-1905
jlutz@pa.gov

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THE PUBLIC SCHOOL EMPLOYEES’	:	
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NOTICE TO DEFEND

TO: GLEN R. GRELL, IN HIS OFFICIAL CAPACITY AS EXECUTIVE
DIRECTOR OF THE PUBLIC SCHOOL EMPLOYEES’ RETIREMENT
SYSTEM
c/o Jackie Lutz, Esq.
5 N 5th Street
Harrisburg, PA 17101-1905
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NOTICE TO DEFEND

TO: THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
OFFICE OF CHIEF COUNSEL
c/o Jackie Lutz, Esq.
5 N 5th Street
Harrisburg, PA 17101-1905

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Petition for Review
(in the nature of a Complaint for Declaratory and Injunctive Relief)

NOW comes Senator Katie J. Muth, through her Transparency Counsel, and pursuant to this Honorable Court’s original jurisdiction for relief against the Public School Employees’ Retirement Board, Mr. Christopher SantaMaria in his official capacity as Chairman of the Public School Employees’ Retirement Board (“Board”), and Mr. Glen Grell in his official capacity as Executive Director of the Public School Employees’ Retirement System (“PSERS”), and PSERS itself, for their months' long failure and refusal, without just cause or reason, to provide Petitioner with PSERS’ records pursuant to her statutory duties as a duly appointed member of the Board and a fiduciary on behalf of the members of the PSERS system.

This action asks this Court to interpret the Public School Employee’s Retirement Code, specifically Section 8521, as it relates to the fiduciary duties of

Board Members and their authority to inspect records necessary to the execution of those fiduciary duties, and to enjoin the Board to provide those records.

In support of this Petition, Senator Muth avers:

STATEMENT OF JURISDICTION

1. This Court has jurisdiction pursuant to 42 Pa.C.S. § 761, which provides that this Court shall have original jurisdiction of all civil actions against the Commonwealth government, including any officer thereof acting in his official capacity. *See also* 42 Pa.C.S. § 7532 (“Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”)

PARTIES

2. Petitioner is the Honorable Katie J. Muth, State Senator for District 44 of Pennsylvania, and Chair of Policy of the Senate Democratic Caucus. Senator Muth is the Democratic Senate Appointee to the Board and was appointed in February 2021.
3. Respondent Public School Employees’ Retirement Board is “an independent administrative board” (24 Pa.C.S. § 8501) which possesses “the power and privileges of a corporation” (24 Pa.C.S. § 8501) and stands in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund. 24 Pa.C.S. § 8521. With this

comes the responsibility to “manage the fund for the exclusive benefit of the members of the system...” *Id.*

4. Respondent Glen Grell is the Executive Director of PSERS and is sued solely in his official capacity.
5. Respondent Christopher Santamaria is the Chairman of the Board and is sued solely in his official capacity.
6. Respondent Public School Employees’ Retirement System was established by the act of July 18, 1917 (P.L. 1043, No. 343), and was codified by the act of June 1, 1959 (P.L. 350, No. 77). *See* 24 Pa.C.S. § 8102.

STATEMENT OF FACTS

7. PSERS is an independent agency of the Commonwealth of Pennsylvania that administers a \$64 billion pension plan for Pennsylvania’s retired public school employees.
8. PSERS is a defined benefit plan; a qualified trust under Section 401(a) of the Internal Revenue Service Code.

The Federal Investigation into the Fund’s Management

9. PSERS is under investigation by the Department of Justice.
10. The fund directly benefits more than 200,000 retired teachers and other public school employees, who receive more than \$6 billion in pension payments each year.

11. The investigation into the fund, upon information and belief, is twofold. First, according to public reports, the investigation is concerned with the Board's adoption of an inaccurate figure for performance, which was adopted in December 2020. Second, according to public reports the investigation is concerned with the Board's acquisition of various real property for investment purposes, the full circumstances of which are still not known to the Board.
12. The Board's outside counsel was recently quoted as stating that the FBI appears to be pursuing a possible cover-up — or, as he put it, “potential concealment of material information.”¹

Senator Muth's Statutory Obligations as a Board Member

13. The members of the Board, including Senator Muth, are the trustees of the fund. 24 Pa.C.S. § 8521(a).
14. Regardless of any other provision of law governing the investments of funds under the control of an administrative board of the State government, Board members have exclusive control and management of the said fund. 24 Pa.C.S. § 8521(a).
15. This control includes full power to invest monies, however, to the exercise of that degree of judgment, skill and care under the circumstances then prevailing

¹Available at: <https://www.spotlightpa.org/news/2021/05/pa-fbi-pension-psers-investigation-subpoenas-properties-real-estate-harrisburg/> (last visited June 4, 2021).

which persons of prudence, discretion and intelligence who are familiar with such matters exercise in the management of their own affairs not in regard to speculation, but in regard to the permanent disposition of the fund, considering the probable income to be derived therefrom as well as the probable safety of their capital. 24 Pa.C.S. § 8521(a).

16. Members of the Board, employees of the board, and agents thereof stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund. 24 Pa.C.S. § 8521(e).

17. Shortly after Senator Muth's appointment, a federal investigation surfaced with allegations of historical mismanagement. The first Board meeting Senator Muth attended was dedicated to a discussion of these matters.

18. Senator Muth, like all Board Members, has a statutory fiduciary duty to the beneficiaries of the fund. 24 Pa.C.S. § 8521(e).

19. To fulfill her duties, and particularly in light of the allegations of wrongdoing that preceded her appointment to the Board, Senator Muth has sought access to documents related to the investment operations and contracts of the Board.

20. One goal of Senator Muth's request is to review prior decision-making processes related to the same investment funds to ensure that the current decisions do not mirror the former ones.

21. If there was wrongful mismanagement, and if it is still occurring, Board

Members would be exposed to liability for breach of fiduciary duty by blindly relying upon the assertions of Board leadership and staff as to the underlying facts upon which current Board decisions are being made.

22. Specifically, Senator Muth has repeatedly sought access to PSERS' documents related to various day-to-day operations of the Board, and that would reveal, among other things, the actions of the Board and the PSERS system relating to the management of the fund.

23. Beginning in February 2021, Senator Muth repeatedly has attempted to obtain information necessary to the performance of her duties from routine information to more detailed information, and each time she is repeatedly thwarted. These correspondences are attached as Exhibit A.

24. On May 7, 2021, Senator Muth requested the following from Charles Spiller,

PSERS' Deputy Chief Investment Officer:

Specifically, in the December 6, 2017 memo that you drafted requesting \$5 million in funding for 812 Market Street, *recommending the allocation of \$5 million to fund the purchase of the property, future feasibility studies, the remediation of asbestos and possibly lead paint, the ultimate demolition of the property and preparation of the property for redevelopment*. Could you please provide copies of any cost assessments, details on the demolition contractor (including RFP documentation, if applicable), environmental assessments and evaluations (including quotes, if applicable), overall demolition costs, and site development costs.

Further, the 2017 memo references that PSERS has conducted due diligence with the respect to the status of zoning and permitted use as a surface parking lot and has obtained confirmation from the City of Harrisburg that the contained use as a public parking lot is permitted. Could you please

provide any documentation from the City of Harrisburg related to the zoning and permitted use. Also, this memo references the master development plan for 812 Market Street. Could you please provide a copy of this master development plan.

The December 5, 2019 memo that you drafted regarding the approval of \$2 million for 812 Market, Inc., states that *PSERS has conducted environmental and hazardous materials diligence on the properties*. Could you please provide these documents. Further, this memo states that funding requested was *allocated for master planning and site development costs for this project*. Could you please provide copies of any cost assessments, details on the demolition contractor (including RFP documentation, if applicable), environmental assessments and evaluations (including quotes, if applicable), overall demolition costs, and site development costs

The October 10, 2019 memo drafted by Glen Grell requesting approval of \$5 million, it was mentioned that a status update was provided related to 812 Market, Inc real estate investment, *including the status of property acquisitions; abatement and demolition activities; site preparation; site survey and lot consolidations; street vacation; and utility service relocation*. Could you please provide any and all documents related to all of the above mentioned activities including reports, memos, and RFP documents.

In addition, this memo references the *on-going master planning efforts, including a proposed joint development effort with Harrisburg University of Science and Technology for a multi-purpose facility to support the University's downtown campus, along with a mixed-use office tower and parking structure(s) on the site*. Could you please provide the preliminary project feasibility term sheet with the University that was referenced in this memo, as well as any updated documents related to this joint venture that may have developed since the October 10, 2019 memo.

25. On Monday, May 10, 2021, she received the following reply from PSERS

Chief Counsel, Jackie Lutz:

These requests relate to the matters subject to ongoing internal and criminal investigations and, as such, any response could impede and interfere with those investigations. I have consulted with counsel for the Board, the System and the internal investigation and we are therefore unable to

respond to these requests. If you have any further questions, please contact Bill Sullivan who as you know serves as counsel for the Board of Trustees in connection with the investigations.

26. Senator Muth responded, stating:

“In order to meet its fiduciary duties imposed upon the Members of the Board, each board member must have access to the underlying books, records, and other information so that the Board itself can fulfill its obligations. Counsel informs me that the Board’s oversight obligations means that Board members will act with the “care,” “skill,” “diligence,” and “prudence” as would an ordinary person and act in furtherance of the beneficiaries’ interests. Therefore, because of the state law, PSERS has a duty to me to provide me with the information that I request, regardless of the circumstances with ongoing external or internal inquiries. Being informed of all information that impacts or could impact the fund is the foundation of upholding one’s fiduciary duty.”

27. The Board's Counsel, Attorney Jackie Lutz, replied:

“I appreciate your concerns; however, we must heed the advice of counsel for the Board, the System and the internal investigation on requests that relate to matters subject to ongoing internal and criminal investigations. You may contact Bill Sullivan, who serves as counsel to the Board of Trustees in connection with these investigations, with any questions.”

28. After a follow-up call with the Board’s Counsel, Senator Muth was again informed that she would not be given these records.

29. Moreover, counsel for the Board informed Senator Muth, through Counsel, that it was ill-advised for “Board Members to seek to educate themselves” beyond the information provided by the PSERS’ staff or beyond the pace of the investigation.

30. Every Board Members' duty is to educate themselves about every aspect of

this \$64 billion pension fund.

31. Again, one purpose for her request for data, documents, and information, wisely, is to compare current Board decision-making processes to prior ones as she considers her actions. Without proper context of data and documents she feels necessary to do her job, Senator Muth and similarly situated Board Members are completely at the mercy of the PSERS' staff, and current Board leadership.
32. Senator Muth and other Board Members are being asked to vote on approximately \$1 Billion dollars of investments this very week. Yet attempts to obtain information, data and documents that in her view could better inform that decisions surrounding these votes have been rejected. Senator Muth is deprived of records to review, compare and make an informed decision.
33. Upon information and belief, many of these same documents have been provided to the Board chairperson and other Board leadership, whose term on the Board began before the investigation was initiated, despite the fact that the statute does not distinguish between Board leadership and other Board members, for purposes of fiduciary duties. 24 Pa.C.S. § 8521(e).
34. After multiple requests for this information, which is required by Senator Muth's statutory function as a Board member, Senator Muth has repeatedly been denied access to these documents.

35. These requests have been denied by PSERS' Chief Counsel and outside Counsel for the Board, as well as other PSERS' staff members.

**COUNT I for DECLARATORY RELIEF
SENATOR MUTH HAS A RIGHT TO RECEIVE PSERS' DOCUMENTS
THAT ARE NECESSARY TO FULFILL HER STATUTORY OBLIGATIONS**

36. The foregoing paragraphs are incorporated into this Count as though stated fully herein.

37. The purpose of declaratory judgment is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered." 42 Pa.C.S. § 7541.

38. "Any person interested, as or through an...administrator, trustee, guardian, or other fiduciary...in the administration of a trust...may have a declaration of rights or legal relations...[t]o direct the ...trustees to do or abstain from doing any particular act in their fiduciary capacity [and] [t]o determine any question arising in the administration of the...trust...." 42 Pa.C.S. § 7535 (2-3) (pertaining to rights of fiduciaries and other persons).

39. This action is brought to ask this Honorable Court to interpret the Public School Employee's Retirement Code as it relates to the fiduciary duties of Board Members and the authority under the same to inspect records necessary to the execution of those fiduciary duties.

40. This dispute arises because of the Board's and PSERS' ongoing refusal to

provide Board Members with adequate documentation to make significant investment decisions that affect Pennsylvania taxpayers.

41. PSERS and the Board, by and through its Counsel, refuses to provide Senator Muth an opportunity to inspect records that directly relate to, and are necessary for the execution of her duties as a fiduciary of the System beneficiaries.

42. This refusal appears to be grounded in a fundamental dispute as to the rights, responsibilities, and authority of Board Members as fiduciaries.

43. Moreover, it also appears, at least in part, to be grounded in a concern that these documents will be shared with the public.

44. Without this Honorable Court's intervention, Senator Muth and other similarly situated Board Members will be unable to ascertain and inspect records necessary to her statutory obligation as a decision-maker.

45. As a statutory manager of the fund, and as a fiduciary on behalf of the several hundred thousand former teachers and employees relying on the fund for their retirement, Senator Muth has an absolute and also an implied right to receive documents that are necessary for her to fulfill her statutory obligations to manage the fund for the members' best interests.

46. It is a well-settled principle of law that powers and authority may be given by necessary implication of an applicable statute. *See Commonwealth v.*

Butler County Mushroom Farm, 454 A.2d 1, 4 (Pa. 1982); *see also Kabel v. Manheim Twp. Sch. Dist.*, 2020 Pa. Commw. Unpub. LEXIS 334, *49, 238 A.3d 529, 2020 WL 3637945 (holding that a tax collector had an implied duty to provide data in the form of tax certifications, pursuant to a statute requiring the tax collector to collect and maintain tax collection records and data); *Commonwealth v. J. & A. Moeschlin, Inc.*, 170 A. 119, 120 (Pa.1934) (finding that an administrative board had the power to forfeit a bond as incidental to the powers conferred to it under statute); *Pennsylvania Human Relations Commission v. Transit Casualty Insurance Co.*, 387 A.2d 58 (Pa. 1978); *Day v. Public Service Commission*, 167 A. 565 (Pa. 1933); *Feldman v. Am. Asset Fin., LLC*, 534 B.R. 627, 634, 2015 U.S. Dist. LEXIS 90945, *8.

47. The PSERS Board possesses the power and privileges of a corporation. 24

Pa.C.S. § 8501.

48. Pennsylvania law already recognizes the rights of corporate stakeholders, in

other contexts, to inspect and view **full** corporate records. 15 Pa. C.S. § 1508;

see also In re Application by Nonprofit Corporate Trs. To Compel Inspection

of Corporate Info., 157 A3d 944, 1001 (Pa. Commw. Ct. 2017). This does not

mean that staff can merely parrot to the Senator what these documents contain.

She is entitled to inspect them.

49. Similarly, Senator Muth has a right to inspect the Board's records in order to

fulfill her statutory duty and obligation to manage the fund for the best interest of the System employees. 24 Pa.C.S. § 8521(a, e).

50. Without full access to the Board's records, Senator Muth is unable to perform her statutory obligations.

51. Board Counsel has failed to provide Senator Muth with valid legal support for its bald assertion that the investigations summarily halt the flow of all information to *Board Members* whose duty it is to protect the fund. Rather, Board Counsel wishes the Board Members to remain silent, wait for the final results of the investigation, and yet continue to vote and act as if the federal investigation does not exist. To act in blind obedience, particularly given the errors that precipitated this investigation, would be nothing short of reckless.

52. Such an approach could expose the Board at a later time to liability for a breach of her fiduciary duty. *See, e.g.*, 15 Pa.C.S. § 512.

53. Blind reliance on assertions and representations by staff and counsel amounts to a failure to exercise proper diligence, to an improper delegation of trustee responsibility, and a dereliction of fiduciary duties.

54. Such an approach defies common sense, let alone the Public School Employee's Retirement Code, and is reckless.

55. Senator Muth asks this Honorable Court to issue a declaratory judgment finding that the Board has the obligation to provide Senator Muth with an

opportunity to inspect or receive records that directly relate to the performance of her statutory obligations on behalf of Pennsylvania's retired teachers, including, but not limited to, those asked for on May 7, 2021.

56. There is no provision of law requiring, or even permitting, the Board to withhold records *from its own membership*, regardless of whether or not those same records may or may not be implicated by an ongoing investigation.

WHEREFORE, Senator Muth requests that this Honorable Court issue a declaratory judgment holding that she has a right to inspect and receive PSERS' documents that are necessary to the fulfillment of her statutory function, including, but not limited to, those documents requested on May 7, 2021.

**COUNT II for PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
THE PSERS BOARD AND THE PSERS SYSTEM MUST BE COMPELLED
TO PERMIT SENATOR MUTH TO INSPECT DOCUMENTS THAT ARE
REQUIRED FOR HER TO FULFILL HER STATUTORY FUNCTION**

57. The foregoing paragraphs are incorporated into this Count as though stated fully herein.

58. Preliminary injunctive relief is appropriate where:

- a. the relief sought by plaintiff is necessary to prevent immediate and irreparable harm that cannot be adequately compensated with damages;
- b. plaintiff has a clear right to the relief requested;
- c. greater injury will result by refusing the injunction rather than by granting it;
- d. the injunction will restore the parties to their status as if it existed immediately prior to the alleged wrongful conduct;
- e. the injunction is reasonably suited to abate the offending activity; and
- f. the injunction will not adversely affect the public interest.

Warehime v. Warehime, 860 A.2d 41, 46 (Pa. 2004).

59. “[T]o sustain a preliminary injunction, the plaintiff’s right to relief must be clear, the need for relief must be immediate, and the injury must be irreparable if the injunction is not granted.” *Sovereign Bank v. Harper*, 674 A.2d 1085, 1091 (Pa. Super. 1996).

60. Only “reasonable grounds” need exist for a court to grant injunctive relief. *Id.* (citing *William v. Children’s Hosp. of Pittsburg*, 479 A.2d 452, 453 (Pa. 1984)).

61. Pennsylvania courts recognize harm to be irreparable when it cannot be adequately compensated in damages, either because of the nature of the right that is injured, or because there exist no certain pecuniary standards for measurements of damages. *SEIU Healthcare Pennsylvania v. Com.*, 104 A.3d 495, 508 (Pa. 2014).

62. Further, where the offending conduct sought to be restrained through a preliminary injunction violates a statutory mandate, irreparable injury will have been established. *See Commonwealth v. Coward*, 414 A.2d 91, 98-99 (Pa. 1980) (holding that where a statute prescribes certain activity, the court need only make a finding that the illegal activity occurred to conclude that there was irreparable injury for purposes of issuing a preliminary injunction); *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28 (Pa. Cmwlth. 2009) (affirming issuance of a preliminary injunction and finding that irreparable

harm was presumed where there was a credible violation of the state consumer protection statute).

63. The Public School Employee's Retirement Code requires Senator Muth, and all of the PSERS' trustees, to apply "judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence who are familiar with such matters exercise in the management of their own affairs...." 24 Pa.C.S. § 8521(a).

64. The Board's refusal to provide Senator Muth with the requested records will result in immediate and irreparable harm, as it forces Senator Muth and other Board members to violate 24 Pa.C.S. § 8521(a), which requires Board members to act with "judgment, skill, and care."

65. This week, the Board intends to vote on approximately \$1 billion dollars of investments, on behalf of Pennsylvania taxpayers.

66. This vote comes in the wake of the federal investigation into the fund's historic mismanagement.

67. Senator Muth asks this Honorable Court for an order compelling the Board to permit Senator Muth to inspect the sought records, *prior* to the Board's upcoming vote on June 10, 2021.

68. Without these documents, Senator Muth cannot exercise oversight over the affairs of the fund in the manner required by 24 Pa.C.S. § 8521(a).

69. In addition to the violation of the Public School Employee's Retirement Code, Senator Muth and other similarly situated Board Members may be exposed to liability for breach of fiduciary duties if she votes on investments without having conducted a thorough inspection of related records, and without educating herself on the context of those decisions. This constitutes immediate and irreparable harm.
70. This injunction will restore the parties to their status prior to the Board's wrongful conduct of refusing to provide Board members with the opportunity to inspect records.
71. This injunction will not adversely impact the public interest, in fact, it is in pursuit and in the protection of the public's best interest that this legal action is filed.
72. Without an injunction, the Board will continue to deny its membership of records necessary for them to make completely informed decisions.
73. In the event that the federal investigation uncovers wrongdoing, every Board member who failed to take action to protect the interests of the beneficiaries may be liable to the 200,000 plus beneficiaries relying on their diligence and decision-making for their retirement living.
74. It is understood that the Board is not in the habit of supplying its membership with records necessary to make informed decisions. That is precisely the issue,

as is the lack of transparency giving rise to the current investigation.

75. Nonetheless, Senator Muth is due to receive these records as a Board member, and access must be granted before the significant upcoming vote, and in advance of all future decisions.

WHEREFORE, Senator Muth requests that this Honorable Court grant relief ordering the PSERS Board, System, and its employees to immediately provide her with the requested documents including, but not limited to, the documents requested on May 7, 2021; that this Honorable Court permanently enjoin PSERS and its Board from withholding similar records from its membership; and that this Court grant any further and additional relief that may be justified under law and fact, and that the costs of this action be taxed to the Petitioner.

Respectfully submitted,

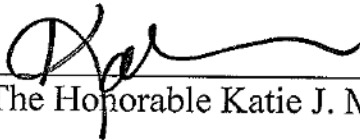
/s/ Terry Mutchler

Terry Mutchler, Partner
(#308052)
OBERMAYER, REBMANN,
MAXWELL, AND HIPPEL, LLP
1500 Market Street, Suite 3400
Philadelphia, PA 19102-2101
T 215.665.3000
F 215.665.3165

DATE: June 8, 2021

VERIFICATION

I, Senator Katie J. Muth, member of the Public School Employee's Board, hereby verify that the facts contained in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of perjury contained within 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.


The Honorable Katie J. Muth

DATE: June 8, 2021

EXHIBIT A

05.07.2021 812 Market Street Document request

From: Sullivan, Jr., William M. <wsullivan@pillsburylaw.com>

Sent: Wednesday, May 12, 2021 10:41 AM

To: Lutz, Jackie W. <jlutz@pa.gov>

Cc: Muth, Senator Katie <Katie.Muth@pasenate.com>; Vymazal, Don <Don.Vymazal@pasenate.com>

Subject: Re: 812 Market Street Document request

■ EXTERNAL EMAIL ■

Good morning, and just to follow through on this email exchange, Senator Muth, and Don, I am happy to meet with you both or with any additional representatives of your choosing to address in a mutually beneficial way the interests and concerns you articulate below. Please let me know what might work for you. Best regards, Bill

Sent from my iPhone

WMS 202-492-0899

William M. Sullivan, Jr. | Partner

Pillsbury Winthrop Shaw Pittman LLP

Firm Chair, Government and Internal Investigations and White Collar Defense

1200 Seventeenth Street NW | Washington, DC 20036-3006

31 West 52nd Street | New York, NY 10019-6131

t +1.202.663.8027 | m +1.202.492.0899

wsullivan@pillsburylaw.com | [website bio](#)

On May 11, 2021, at 8:52 AM, Lutz, Jackie W. <jlutz@pa.gov> wrote:

Dear Senator Muth,

Thank you for your email. I appreciate your concerns; however, we must heed the advice of counsel for the Board, the System and the internal investigation on requests that relate to matters subject to ongoing internal and criminal investigations. You may contact Bill Sullivan, who serves as counsel to the Board of Trustees in connection with these investigations, with any questions.

Jackie Wiest Lutz, Chief Counsel

Public School Employees' Retirement System

5 North 5th Street

Harrisburg, PA 17101-1905

Phone: 717.720.4679

Cell: 717.727.5914

Email: jlutz@pa.gov

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From: Muth, Senator Katie <Katie.Muth@pasenate.com>

Sent: Monday, May 10, 2021 4:53 PM

To: Lutz, Jackie W. <jlutz@pa.gov>

Cc: Vymazal, Don <don.vymazal@pasenate.com>

Subject: Re: 812 Market Street Document request

Ms. Lutz,

I am disappointed and concerned about your response. This is yet another troubling roadblock in my short time as a newly appointed trustee.

In order to meet its fiduciary duties imposed upon the Members of the Board, each board member must have access to the underlying books, records, and other information so that the Board itself can fulfill its obligations. Counsel informs me that the Board's oversight obligations means that Board members will act with the "care," "skill," "diligence," and "prudence" as would an ordinary person and act in furtherance of the beneficiaries' interests. Therefore, because of the state law, PSERS has a duty to me to provide me with the information that I request, regardless of the circumstances with ongoing external or internal inquiries. Being informed of all information that impacts or could impact the fund is the foundation of upholding one's fiduciary duty.

Please send the requested information to this email.

Thank you,

KJM

Katie Muth, State Senator, SD44

She/ Her/ Hers

From: Lutz, Jackie W. <jlutz@pa.gov>

Sent: Monday, May 10, 2021 8:36:03 AM

To: Vymazal, Don <Don.Vymazal@pasenate.com>

Cc: Spiller, Charles <cspiller@pa.gov>; Muth, Senator Katie <Katie.Muth@pasenate.com>

Subject: 812 Market Street Document request

■ EXTERNAL EMAIL ■

Dear Mr. Vymazal-

Mr. Spiller has forwarded me your inquiry from Senator Muth. These requests relate to the matters subject to ongoing internal and criminal investigations and, as such, any response could impede and interfere with those investigations. I have consulted with counsel for the Board, the System and the internal investigation and we are therefore unable to respond to these requests. If you have any further questions, please contact Bill Sullivan who as you know serves as counsel for the Board of Trustees in connection with the investigations.

Jackie Wiest Lutz, Chief Counsel

Public School Employees' Retirement System

5 North 5th Street

Harrisburg, PA 17101-1905

Phone: 717.720.4679

Cell: 717.727.5914

Email: jlutz@pa.gov

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Good afternoon Charles,

Senator Muth requested I reach out and request documentation related to memos from December 6, 2017; December 5, 2018; and October 10, 2019. These memos were provided before Senator Muth's time on as a PSERS Board Member and are regarding property listed as 812 Market Street and 812 Market, Inc.

Specifically, in the December 6, 2017 memo that you drafted requesting \$5 million in funding for 812 Market Street, *recommending the allocation of \$5 million to fund the purchase of the property, future feasibility studies, the remediation of asbestos and possibly lead paint, the ultimate demolition of the property and preparation of the property for redevelopment*. Could you please provide copies of any cost assessments, details on the demolition contractor (including RFP documentation, if applicable), environmental assessments and evaluations (including quotes, if applicable), overall demolition costs, and site development costs.

Further, the 2017 memo references that PSERS has conducted due diligence with the respect to the status of zoning and permitted use as a surface parking lot and has obtained confirmation

from the City of Harrisburg that the contained use as a public parking lot is permitted. Could you please provide any documentation from the City of Harrisburg related to the zoning and permitted use. Also, this memo references the master development plan for 812 Market Street. Could you please provide a copy of this master development plan.

The December 5, 2019 memo that you drafted regarding the approval of \$2 million for 812 Market, Inc., states that *PSERS has conducted environmental and hazardous materials diligence on the properties*. Could you please provide these documents. Further, this memo states that funding requested was *allocated for master planning and site development costs for this project*. Could you please provide copies of any cost assessments, details on the demolition contractor (including RFP documentation, if applicable), environmental assessments and evaluations (including quotes, if applicable), overall demolition costs, and site development costs

The October 10, 2019 memo drafted by Glen Grell requesting approval of \$5 million, it was mentioned that a status update was provided related to 812 Market, Inc real estate investment, *including the status of property acquisitions; abatement and demolition activities; site preparation; site survey and lot consolidations; street vacation; and utility service relocation*. Could you please provide any and all documents related to all of the above mentioned activities including reports, memos, and RFP documents.

In addition, this memo references the *on-going master planning efforts, including a proposed joint development effort with Harrisburg University of Science and Technology for a multi-purpose facility to support the University's downtown campus, along with a mixed-use office tower and parking structure(s) on the site*. Could you please provide the preliminary project feasibility term sheet with the University that was referenced in this memo, as well as any updated documents related to this joint venture that may have developed since the October 10, 2019 memo.

Thank you and please let me know if you should have any questions regarding the documentation and details requested.

Sincerely,

Don

Don Vymazal

Chief of Staff

Office of Senator Muth

(610) 792-2137 office

(610) 730-7773 cell

CERTIFICATE OF COMPLIANCE

Pursuant to Pennsylvania Rule of Appellate Procedure 127, I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Terry Mutchler

Terry Mutchler, Esq.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE HONORABLE KATIE J. MUTH :
 :
v. : No. _____
 :
PUBLIC SCHOOL EMPLOYEES' :
RETIREMENT BOARD, :
CHRISTOPHER SANTAMARIA, IN HIS :
OFFICIAL CAPACITY AS CHAIRMAN, :
GLEN R. GRELL IN HIS OFFICIAL :
CAPACITY AS EXECUTIVE DIRECTOR, and :
THE PUBLIC SCHOOL EMPLOYEES' :
RETIREMENT SYSTEM, :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing upon the persons listed below by first class and electronic mail, which service satisfies the requirements of Pa.R.A.P. 121:

Jackie Lutz, Esq.
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jlutz@pa.gov
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Christopher SantaMaria
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Glen R. Grell
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/s/ Terry Mutchler

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DATED: June 8, 2021