

IN THE SUPREME COURT OF OHIO

STATE EX REL., NORTHERN OHIO)
 CHAPTER OF ASSOCIATED BUILDERS)
 & CONTRACTORS, INC., et al.,)
)
 Appellants,)
)
 v.)
)
 BARBERTON CITY SCHOOLS BOARD)
 OF EDUCATION, et al.,)
)
 Appellees.)

Case No. 2010-0943

On Appeal from the
Summit County Court of Appeals,
Ninth Appellate District

FILED
 MAR 15 2011
 CLERK OF COURT
 SUPREME COURT OF OHIO

EMERGENCY MOTION TO DISMISS OF APPELLEE
 BARBERTON CITY SCHOOLS BOARD OF EDUCATION

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EMERGENCY MOTION TO DISMISS

The Board of Education of the Barberton City School District (“Board of Education”) respectfully requests that the Court dismiss this case as moot. The case is scheduled for oral argument on April 19, 2011. The Board of Education incorporates by reference the Emergency Motion to Dismiss of Appellee Ohio School Facilities Commission, as if fully rewritten herein.

This Court has consistently recognized its duty to decide actual controversies between parties legitimately affected by specific facts and to render judgments that can be effectuated. *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, N.E.2d 371. In this case, the early site work package for the New Barberton Middle School Project, which was the subject of the Taxpayers’ complaint regarding the use of prevailing wages, was complete in July 2009. In addition, on February 24, 2011, the Ohio School Facilities Commission passed Resolution 11-16, which rescinded resolution 7-98, the resolution that formed the basis for the Taxpayers’ complaint against the Board of Education.¹ Am. Complaint at ¶34. As a result, there is no injury that can be redressed by this court. Indeed, any opinion by this court with respect to the proposition of law accepted in this case would be advisory in nature. *State ex rel. White v. Kilbane Koch* (2002), 96 Ohio St.3d. 395, 2002-Ohio-4848, 775 N.E.2d 508, at ¶18 (finding the court will not engage in advisory opinions). Further, the Commission’s action in rescinding resolution 7-98 eliminates the possibility that the Taxpayers will ever face the issues raised in their complaint under the same circumstances again. Therefore, any limited exception to the mootness doctrine clearly does not apply. See *Smith v. Leis* (2006), 111 Ohio St. 3d 493, 495 2006-Ohio-6113, 857 N.E. 2d 123, at ¶15. Similarly, the exception for a “debatable constitutional question” or a matter of great public or general interest,” is not applicable here. *Id.*, at ¶16-17.

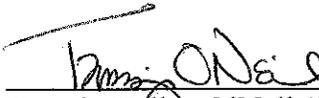
¹ Resolution 11-16, which is attached to the Emergency Motion to Dismiss of Appellee Ohio School Facilities Commission, is incorporated herein by reference.

As a final matter, the Board of Education reiterates the arguments of the Ohio School Facilities Commission that the Taxpayers are not entitled to attorney fees in connection with this common-law action, and even if they were, the Taxpayers could not satisfy the prerequisite for obtaining them, as they have consistently failed to prevail over the course of the litigation.

CONCLUSION

Based upon the foregoing, the Board respectfully requests that this Court dismiss the appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Motion to Dismiss of Appellee Barberton City Schools Board of Education was served by U.S. mail this 14 day of March, 2011, upon the following:

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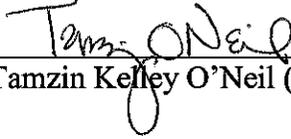
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