



Outlook

Fw: Legality of Lease Agreement

From NJ21st Team <team@nj21st.com>**Date** Tue 8/26/2025 12:26 PM**To** adevanney@bhtwp.com <adevanney@bhtwp.com>; John Foster <jfoster@bhtwp.com> <jfoster@bhtwp.com>; Manuel Couto <mcouto@bhtwp.com>; Andrew Moran <amoran@bhtwp.com>; John Foster <jfoster@bhtwp.com> <jfoster@bhtwp.com>; Margaret - TC <millis@bhtwp.com>; Susan Poage <spoage@bhtwp.com>**Cc** Natasha Board <njoly@bhpsnj.org>; Laura Kapuscinski <llkap@icloud.com> <llkap@icloud.com>; Dr. Kim Feltre <kfeltre@bhpsnj.org> <kfeltre@bhpsnj.org>; Iviana@bhtwp.com <lviana@bhtwp.com>

Good Morning everyone,

I am forwarding this exchange to everyone in muni who was on Laura's initial email, since people had dropped off the chain and she's on (unpaid) vacation.

Laura's original question was directed to the mayor, council and boe members, as they were the ones who voted on the resolution. I've left the attorney off this chain — mainly to avoid legal bills adding up unnecessarily.

In any case, please see the exchange below.

If any **elected representatives** would like to share their perspective on this issue, we'd welcome it.

Being that folks were dropped off I want to be sure the opportunity was presented.

We have already heard back from three members of the Board on their actual positions.

Thanks,
John

From: NJ21st Team <team@nj21st.com>**Sent:** Monday, August 25, 2025 7:23 PM**To:** Natasha Joly <njoly@bhpsnj.org>; Scott Salmon <ssalmon@jmslawyers.com>**Cc:** Liza Viana <lviana@bhtwp.com>; kfeltre@bhpsnj.org <kfeltre@bhpsnj.org>**Subject:** Re: Legality of Lease Agreement

Hi Natasha (and everyone else),

Since you haven't gotten a response yet, I thought I'd fill the void here and take a crack at it - it's been on my mind ever since Laura got that anonymous letter (wild, right?)

So I think we can all agree that the Township approved the lease agreement by resolution rather than by ordinance.

We can also agree that the township referred to it as a lease agreement ad-nauseum (even on the ballot) and now, after being asked about whether passing it by resolution was lawful, is describing it as a shared services agreement not a lease.

The actual details of the lease (because that is in fact what it is)only came out right before the BOE meeting, which meant many people there were surprised to find that the turf field wasn't even included.

Here's what I think is important.

If something is passed by ordinance, **residents have the right to petition for a referendum and bring it to a public vote.**

With a resolution, that's not an option.

Since the Township had already held an early (non-binding) public vote before the agreement details were shared, they might point to that if this were ever challenged in court and say, in effect, "we already had a referendum of sorts."

That's just my interpretation — the Township may have a different view.

My guess, though, is that a court could look at the sequence of events skeptically and question whether the town deliberately (and unlawfully) side-stepped the possibility of a **fully informed** referendum. I very much doubt the vote today would have the same result given the wealth of information people now have.

You may want to ask the Board attorney if this makes sense.

In any case I emailed the Rec Department asking about the field, since questions at the last meeting went unanswered. Ill update the group as everyone on the chain is apparently as in the dark about it as the public.

Best,
John

From: Natasha Joly <njoly@bhpsnj.org>
Sent: Monday, August 25, 2025 8:38 AM
To: Scott Salmon <ssalmon@jmslawyers.com>
Cc: Liza Viana <lviana@bhtwp.com>; kfeltre@bhpsnj.org <kfeltre@bhpsnj.org>; NJ21st Team <team@nj21st.com>
Subject: Re: Legality of Lease Agreement

Good morning.

I'm following up on the email below.

Thank you,
 Natasha

On Aug 12, 2025, at 10:22 AM, Natasha Joly <njoly@bhpsnj.org> wrote:

Good morning all.

I'm a bit confused. Is the lease agreement that was entered to in March a lease or something else "stylized" as a lease? And if it is a lease, what are the applicable regulations? My understanding that an actual lease for a 25yr term was required in lieu of actual ownership to receive certain grants. Not something "stylized" as a lease.

Note: These are my own personal thoughts and opinions and do no reflect the opinion of the Board of Education.

Thank you,
 Natasha

On Aug 12, 2025, at 9:59 AM, NJ21st Team <team@nj21st.com> wrote:

Thank you again for responding. I just wanted to confirm we're on the same page — the lease agreement referenced in the shared services agreement was passed by resolution at the two March meetings. There appears to be an actual lease in place that was approved by resolution, while the shared services agreement seems to be the measure that's been stylized. Given the public interest in how leases are approved — and the controversy surrounding this agreement — addressing the issue now may be the wiser course. I added Natasha (a BOE member) and Dr. Feltre to this chain so they are aware. Thanks again, and have a great week. Laura

From: Scott Salmon <ssalmon@jmslawyers.com>
Sent: Tuesday, August 12, 2025 9:30 AM
To: NJ21st Team <team@nj21st.com>
Cc: Liza Viana <lviana@bhtwp.com>
Subject: RE: Legality of Lease Agreement

Hi Ms. Kapuscinski, not a problem. You're correct that the addendum is tied to and related to the lease agreement. But just because we're referring to it as a lease agreement doesn't mean that it falls under the statute that you identified. Even if it's not formally labeled as a Shared Services Agreement, it still is one in function, which is why we tried to clarify it in the addendum.

As to whether a challenge would have any impact, we do not believe it would. Courts, in our experience, tend to look past the labeling of things like this and at the substance and merits of it. Even if it were challenged, however, the Council would be able to simply "cure" the issue by ratifying it with a Shared Services Resolution. Feel free to reach out with any further questions.

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From: NJ21st Team <team@nj21st.com>
Sent: Monday, August 11, 2025 4:32 PM
To: Scott Salmon <ssalmon@jmslawyers.com>
Cc: Liza Viana <lviana@bhtwp.com>
Subject: Re: Legality of Lease Agreement

EG Technology

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Hi Mr. Solomon,

Thank you for responding.

I had a chance to reread the May 20 resolution and the Shared Services Agreement. While it was clearly adopted under the Uniform Shared Services and Consolidation Act it still seems closely tied to the original Lease Agreement.

The agreement says it's there to satisfy certain lease contingencies (14(e)–14(g)).

The term runs for the length of the lease, except for the tennis courts after termination.

Some obligations, like tennis court access, are "consistent with the terms of the Lease Agreement."

That makes it feel less like a stand-alone shared services arrangement and more like a piece of the lease that's been reframed under the shared services law. I get your point that the process is invalid under N.J.S.A. 40A:65-5, but I'm wondering — if the lease were ever challenged or changed, would that have any impact on this agreement?

It seems that the term lease agreement is a bit more than just a stylized characterization.

Thank you for your response

Laura

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From: Scott Salmon <ssalmon@jmslawyers.com>

Sent: Monday, August 11, 2025 3:23:58 PM

To: NJ21st Team <team@nj21st.com>

Cc: Liza Viana <lviana@bhtwp.com>

Subject: RE: Legality of Lease Agreement

Hi Ms. Kapuscinski, I apologize for the delay; I've been in a trial for the past few weeks and have not had an opportunity to respond. While the agreement was initially stylized as a lease, it is, for all intents and purposes, a Shared Services Agreement, which may be authorized by resolution under N.J.S.A. 40A:65-5. That was, in part, why the amendment subsequently made in May was stylized as a Shared Services Agreement and explicitly adopted under those laws. What you are referencing is really intended for when the Township leases its land to other (non-governmental) entities for profit.

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From: NJ21st Team <team@nj21st.com>

Date: Thursday, July 24, 2025 at 11:11 PM

To: dkhanna@bhpsnj.org <dkhanna@bhpsnj.org>, sai-board <sbhargavi@bhpsnj.org>, tforegger@bhpsnj.org <tforegger@bhpsnj.org>, Natasha Board <njoly@bhpsnj.org>, Bdillon@bhpsnj.org <Bdillon@bhpsnj.org>, dterrero@bhpsnj.org <dterrero@bhpsnj.org>, pstanley@bhpsnj.org <pstanley@bhpsnj.org>, gbradford@bhpsnj.org <gbradford@bhpsnj.org>, Manuel Couto <mcouto@bhtwp.com>, Margaret Illis <millis@bhtwp.com>, Bill Machado <bmachado@bhtwp.com>, Andrew Moran <amoran@bhtwp.com>, John Foster <jfoster@bhtwp.com>, Susan Poage <spoage@bhtwp.com>, Liza Viana <lviana@bhtwp.com>, Dr. Kim Feltre <kfeltre@bhpsnj.org>, Angie Devanney <adevanney@bhtwp.com>

Subject: Re: Legality of Lease Agreement

Hi Everyone-

Can I please get a response to my questions?

Thanks,
 LK

From: NJ21st Team

Sent: Saturday, June 14, 2025 2:59 PM

To: dkhanna@bhpsnj.org <dkhanna@bhpsnj.org>, sai-board <sbhargavi@bhpsnj.org>, tforegger@bhpsnj.org <tforegger@bhpsnj.org>, Natasha Board <njoly@bhpsnj.org>, Bdillon@bhpsnj.org <Bdillon@bhpsnj.org>, dterrero@bhpsnj.org <dterrero@bhpsnj.org>, pstanley@bhpsnj.org <pstanley@bhpsnj.org>, gbradford@bhpsnj.org <gbradford@bhpsnj.org>, mcouto@bhtwp.com <mcouto@bhtwp.com>, Margaret - TC <millis@bhtwp.com>, bill-TC <bmachado@bhtwp.com>, amoran@bhtwp.com <amoran@bhtwp.com>, John Foster <jfoster@bhtwp.com>, jfoster@bhtwp.com <jfoster@bhtwp.com>, Susan Poage <spoage@bhtwp.com>, spoage@bhtwp.com <spoage@bhtwp.com>, lviana@bhtwp.com <lviana@bhtwp.com>, Dr. Kim Feltre <kfeltre@bhpsnj.org>, kfeltre@bhpsnj.org <kfeltre@bhpsnj.org>, adevanney@bhtwp.com <adevanney@bhtwp.com>

Subject: Legality of Lease Agreement

Hi Everyone,

I'm reaching out as part of our ongoing reporting on the turf field project at Lower Columbia.

As you likely know, under N.J.S.A. 40A:12-5, municipalities are required to approve leases of property through an ordinance, not a resolution. From what we can tell, the Township approved the lease with the Board of Education by resolution only (No. 2025-I-31, adopted March 4), with no ordinance introduced or adopted to authorize it.

Likewise, the amended lease was approved by resolution at the special meeting on March 25.

This isn't just a technical issue. Ordinances require proper public notice, public hearings, and multiple readings. Resolutions don't.

That means a long-term lease involving public land and taxpayer dollars appears to have been approved without the public visibility, comment, or procedural safeguards that the law is designed to ensure.

It also raises a few practical concerns:

If the lease wasn't properly authorized, it could be challenged or invalidated.

Any public money already spent could be called into question.

It may create legal or financial risk going forward—especially if additional funding or insurance depends on having a valid lease in place.

Can someone please confirm:

Whether an ordinance was ever introduced or adopted to approve the lease?

If not, does the Township intend to address the issue?

We're preparing coverage on this and would appreciate a response by Tuesday, June 17 so we can include your input.

Thanks,
Laura Kapuscinski
Editor

<https://nj21st.com/>

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