

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

2014 SEP -8 PM 2:10

TOWNSHIP TRUSTEES OF SCHOOLS )  
TOWNSHIP 38 NORTH, RANGE 12 )  
EAST, )

Plaintiff, )

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204 )

Defendants )

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

No. 13 CH 23386 CLERK  
DOROTHY BROWN

Judge Sophia H. Hall  
Calendar 14

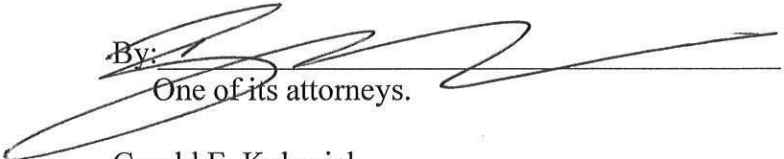
**NOTICE OF FILING**

**TO:** Charles A. LeMoine  
Rosa M. Tumialán  
Stephen M. Mahieu  
Dykema Gossett PLLC  
10 S. Wacker Drive, Suite 2300  
Chicago, IL 60606

PLEASE TAKE NOTICE that on September 8, 2014, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **Plaintiff's Response to Defendant's Motion to Reconsider**, a copy of which is hereby attached and served on you.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By:   
One of its attorneys.

Gerald E. Kubasiak  
Barry P. Kaltenbach  
Gretchen M. Kubasiak  
KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.  
20 South Clark Street, 29<sup>th</sup> Floor  
Chicago, Illinois 60603  
(312) 630-9600 (Phone)  
(312) 630-7939 (Fax)  
No. 48237

**PROOF OF SERVICE**

The undersigned, an attorney, certifies that copies of the following documents:

**Plaintiff's Response to Defendant's Motion to Reconsider**

has been served upon:

Charles A. LeMoine  
[clemoine@dykema.com](mailto:clemoine@dykema.com)  
Rosa A. Tumialán  
[rtumialan@dykema.com](mailto:rtumialan@dykema.com)  
Stephen M. Mahieu  
[smahieu@dykema.com](mailto:smahieu@dykema.com)  
Dykema Gossett PLLC  
10 S. Wacker Drive, Suite 2300  
Chicago, IL 60606

as follows:

- by personal service on September 8, 2014 before 4:00 p.m.
- by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 20 S. Clark Street, Chicago, Illinois, on September 8, 2014 before 4:00 p.m.
- by facsimile transmission from 20 S. Clark Street, Suite 2900, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 630-7939, consisting of \_\_\_ pages on September 8, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.
- by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on September 8, 2014 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
- by \_\_\_\_\_, on September 8, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.

  
Barry P. Kaltbach, attorney

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

2014 SEP -8 PM 2:17

TOWNSHIP TRUSTEES OF SCHOOLS )  
TOWNSHIP 38 NORTH, RANGE 12 )  
EAST, )  
  
Plaintiff, )  
  
vs. )  
  
LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204 )  
  
Defendants )

COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.  
No. 13 CH 23386 CLERK  
JUDITH BROWN  
Judge Sophia H. Hall  
Calendar 14

**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO RECONSIDER**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“Township Trustees”), for its Response to the Motion to Reconsider Order of June 18, 2014, filed by defendant, Lyons Township High School District No. 204’s (“District 204”), states as follows:

**I. INTRODUCTION**

Township Trustees filed its Verified Complaint for Declaratory Relief on October 16, 2013. District 204 filed its original Motion to Dismiss on January 31, 2013. District 204 first argued that Township Trustees had failed to attach certain invoices to its Verified Complaint. This Court denied that aspect of the Motion to Dismiss because Illinois law did not require evidence, such as the invoices at issue, to be attached to the Verified Complaint. District 204 next argued that the equitable doctrine of laches barred the Township Trustees’ action. This Court denied that aspect of the Motion to Dismiss without prejudice, finding that there was not a sufficient factual record before it to determine the applicability of laches. Finally, and germane to the Motion to Reconsider, District 204 argued that the Township Trustees’ action was barred

by a five-year limitations period. This Court also denied that aspect of the Motion to Dismiss. It is this last argument that District 204 now wishes to re-argue.

**II. DEFENDANT OFFERS ONLY REHASHED ARGUMENT TO SUPPORT WHAT WOULD BE AN INTERLOCUTORY, EVIDENTIARY RULING**

“The purpose of a motion to reconsider is to bring to the trial court’s attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand.” *River Vill. I, LLC v. Central Ins. Cos.*, 396 Ill. App. 3d 480, 492 (1st Dist. 2009). In its Motion to Reconsider, District 204 does not assert the existence of any new evidence or a change in the governing law. Indeed, District 204 submits no new case law whatsoever in support of its Motion. District 204 merely rehashes its argument using new words. This Court has already considered District 204’s arguments and the legal authority at issue.

Notably, even if District 204 were to prevail on its Motion to Reconsider, this lawsuit will continue. District 204 acknowledges that the Township Trustees have, minimally, the right to proceed against it with respect to the allocation of public funds over the past five years. District 204 does not seek dismissal of this lawsuit, but rather an interlocutory ruling on whether there is a five-year limitations period, or no limitations period. This is akin to asking for an evidentiary ruling at the pleadings stage. Moreover, District 204 seeks this ruling at this initial stage of the proceedings and without this Court having the benefit of a fully-developed record. Township Trustees believe that the evidence will indeed show that all of the funds at issue are public funds that the Trustees **continue to hold in trust** and that public rights are at stake. District 204 is free to assert the limitations period as an affirmative defense and move for summary judgment once a record has been developed. This Court will then have all of the facts in front of it and can make its ruling.

For this reason, from a procedural standpoint, this Court should exercise its discretion and deny the Motion to Reconsider. *See Cable America, Inc. v. Pace Elecs., Inc.*, 396 Ill. App. 3d 15, 18 (1st Dist. 2009) (affirming the trial court's discretion to deny motion to reconsider). On the merits, however, this Court should deny the Motion to Reconsider because the statute of limitations does not bar an action brought by a public entity seeking to enforce public rights. This Court correctly denied District 204's Motion to Dismiss the first time.

### **III. BRIEF SUMMARY OF RELEVANT FACTUAL ALLEGATIONS**

Pursuant to the Illinois School Code, 105/ ILCS 5/8-7, the Lyons Township Treasurer ("Treasurer") is appointed by the Township Trustees to act on its behalf as the sole custodian of public funds held on behalf of eleven school districts located within Lyons Township as well as two additional educational cooperatives and a medical self-insurance cooperative. (Compl., ¶4). As the parties and this Court have discussed, there are three primary categories of monies to which Township Trustees seek declaratory relief.

First, Section 5/8-4 of the School Code provides, in part that "[e]ach...township high school district...shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expense of the treasurer's office". (Compl., ¶5). District 204's unpaid *pro rata* share for the years 2000 through 2011, which the School Code mandates it pay, totals in excess of \$2,500,000.00. (Compl., ¶13).

Second, one of the duties of the Treasurer, pursuant to Section 5/8-7 of the School Code, is to allocate interest earned on the investment of funds held on behalf of the school districts (Compl., ¶14). Between 1995 through 2012, District 204 was improperly allocated \$1,380,496.53 in principal and interest on investments that it was not entitled to receive and that should be re-allocated to the other public entities in the township. (Compl., ¶14).