

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

TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12)	
EAST,)	
)	No. 13 CH 23386
Plaintiff,)	
)	Judge Sophia H. Hall
vs.)	Calendar 14
)	
LYONS TOWNSHIP HIGH SCHOOL)	
DISTRICT NO. 204,)	
)	
Defendant.)	

**TTO'S SUPPLEMENTAL RESPONSE TO
LT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("TTO"), by its undersigned counsel, MILLER, CANFIELD, PADDOCK & STONE, P.L.C., for its Supplemental Response to the "Motion for Partial Summary Judgment: The TTO's Claims are Subject to a 5-Year Limitations Period" (the "Motion") filed by Defendant, Lyons Township High School District No. 204 ("LT"), states as follows:

I. INTRODUCTION

A. The TTO's Understanding of the Purpose of This Brief.

During the December 21, 2017 hearing on the Motion, this Court requested the parties submit supplemental briefs to provide further information as to how the Treasurer, as trustee, handles the funds in its care. During that hearing, this Court also discussed a case cited by both parties in their primary briefs, *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653, 656 (1883), and suggested additional discussion of this case would be appropriate. This Supplemental Response addresses these issues.

B. Brief Summary of the Claims and Theories at Issue in the Motion.

The TTO brings this lawsuit to rectify financial improprieties that provided LT with impermissible fiscal benefits to the detriment of other school districts within Lyons Township. These improprieties were occasioned by the former Treasurer, Robert Healy (“Healy”). Healy: (a) did not act to cause LT to pay LT’s *pro rata* share of the Treasurer’s compensation and expenses of office; (b) improperly paid for LT’s annual audit from the Treasurer’s operating account and treated it as an expense of his office rather, rather than having LT pay for its own audit like every other school district; and (c) over-allocated income from pooled investments to LT. All of this was in violation of the School Code. If the TTO prevails, it recovers nothing for itself, because it does not own any of the funds in question. The TTO holds those funds, in trust, for all of the school districts within Lyons Township. Those districts, not the TTO, are the parties damaged by the improper fiscal benefits given to LT.

As established in the TTO’s primary Response brief, the Treasurer is a “zero-sum” office. It has no source of revenue; it merely manages public funds, as trustee, that belong to the eleven (11) school districts under its care, which consist of thirty-eight (38) schools and 20,000 students.¹ If LT received fiscal benefits to which it was not entitled under the School Code, *the other school districts necessarily suffered the corresponding fiscal detriment*. More particularly:

- if LT does not pay its *pro rata* share of the Treasurer’s expenses, this means the funding shortfall *must* be made up by the other districts;
- if LT does not pay for its own annual audit (like the other districts did) – but instead the Treasurer pays for LT’s annual audit and treats it an expense of the Treasurer’s office – this means that the other districts not only paid for their own annual audit, but paid their *pro rata* share of LT’s annual audit, while LT did not pay the full cost of its annual audit; and

¹ The Treasurer also is responsible for the LaGrange Area Department of Special Education, which services 15 school districts, and the West 40 Intermediate Service Center, which services 40 school districts.

- if LT was over-allocated income from pooled investments, this means the other districts were under-allocated income from those same pooled investments.

The merits of these three claims are not at issue in LT's Motion. LT argues only that the claims are subject to a five-year limitations period. In its Response, the TTO argues that *no* limitations period applies to these claims for three (3) separate reasons, any one of which provides this Court with sufficient grounds to deny LT's Motion.

First, the limitations period does not apply because the TTO has at all times held the applicable public monies in trust. This exception to the statute of limitations is the focus of this Supplemental Response. Second, even if the TTO did not hold the public monies in trust, the TTO seeks to enforce a "public right" as the Illinois Supreme Court has defined that phrase in *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983) and *Board of Education v. A.C.&S. Inc.*, 131 Ill. 2d 428 (1989). The TTO does not bring this lawsuit to benefit itself, but rather to benefit the other school districts for which it serves as trustee. Third, the liability of LT is created by the affirmative obligations of the School Code, not by the conduct of the parties. These are each an independent basis for determining no limitations period applies.

At the December 21, 2017 hearing, the TTO understood this Court to be concerned primarily with the *first* of these three reasons that no limitations period applies, *i.e.*, that the TTO holds the public funds at issue in trust. The TTO also understood this Court to be focused primarily on how this impacts the Court's analysis of the "audit fees" claim.

II. THE HOW AND WHY OF THE FACT THAT THE TREASURER IS A TRUSTEE HOLDING PUBLIC SCHOOL FUNDS IN TRUST

The TTO is a body politic that does its business through three elected Trustees, who appoint the Treasurer. It should be undisputed that the Treasurer is a trustee of public school funds and, therefore, holds those funds in trust. Indeed, that is the literal name of the TTO under

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 3 of 12

Illinois law: “Township *Trustees* of Schools Township 38 North, Range 12 East.” (Emphasis added.)

A. The Treasurer’s Obligations as Trustee Under the School Code.

The School Code directs the Treasurer to: (a) “[c]ollect from the township and county collectors the full amount of taxes levied by the school boards in his township;” (b) “[b]e responsible for the receipts, disbursements and investments arising out of the operation of the school districts under his supervision;” and (c) “[p]ay all lawful orders issued by the school board of any district in his township.” 105 ILCS 5/8-17(a)(2), (a)(3) and (a)(9). The Treasurer does not own the public school funds in its care. The Treasurer is, however, the “only lawful custodian” of these funds.² 105 ILCS 5/8-7. The funds at issue include public tax dollars, other, miscellaneous income of the school districts, and income generated from investing these sums. (See Affidavit of Dr. Susan Birkenmaier, attached hereto as Exhibit A, ¶4.)³

B. How School Districts Pay Bills From Funds the Treasurer Holds in Trust.

LT and all of the other school districts have a payroll to meet and expenses to pay. So how do they pay their bills, given that the Treasurer holds their funds in trust? As recited above, one of the Treasurer’s duties is to “pay all lawful orders issued by the school board of any district in his township.” 105 ILCS 5/8-17(a)(9). Similar direction is provided by Section 8-16 of the School Code, which directs the Treasurer to make payments on behalf of school districts “only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board....” 105 ILCS 5/8-16.

² The fact that the Treasurer is the “only lawful custodian” of school funds is further evidence that: (a) the Treasurer is a trustee, holding funds in trust (for that is what a custodian does); and (b) the school districts, as a matter of law, do not have custody of their own funds (or else the Treasurer would not be the *only* lawful custodian).

³ The TTO submitted an affidavit from Dr. Birkenmaier as Exhibit 3 to its original Response. The affidavit attached as Exhibit A to this brief provides further evidence supporting the expanded factual discussion in *this* Supplemental Response.

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 4 of 12

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 5 of 12

The form of the “order” is specifically provided for in Section 10-18 of the School Code. Section 10-18 also provides that “[t]he school board shall issue no order, except for teachers' wages, unless at the time there are sufficient funds in the hands of the treasurer to pay it.”⁴ 735 ILCS 5/10-18. Instead of using an “order” to pay its bills, however, Section 10-20.19 allows a school board to instead substitute a certified copy board minutes, properly signed, showing all bills approved for payment and showing the payee, the purpose of the payment, and to what budgetary item each payment shall be debited. 105 ILCS 5/10-20.19. A voucher system may also be used so long as it provides the same information. *Id.* In short, the answer to the question is that the school district must authorize and direct the Treasurer to make each particular payment.

As an example, two such authorizations and directions (from LT in February 2016) are attached as Exhibit B1 (for LT’s payroll) and B2 (for LT’s other accounts payable). Each Exhibit consists of a cover sheet or cover sheets authorizing and directing the Treasurer to pay a total amount, and then a check register identifying the specific check numbers to be used, the payee, check date and check amount. (See Exhibits B1 and B2; Affidavit, Exhibit A, ¶¶5-6.)

Some school districts, such as LT, prepare their own checks. After submitting the authorization and direction to the Treasurer, these districts bring the checks identified on the register to the Treasurer for the Treasurer to sign. Other districts do not prepare their own checks. For those districts, the Treasurer prepares their checks based upon the authorization and register, and then signs them. (See Affidavit, Exhibit A, ¶¶7-9.) The difference is not important – because *these accounts are in the Treasurer’s name and only the Treasurer has signature power on the accounts on which the checks are drawn.* The school districts cannot withdraw money from these accounts or sign checks on these accounts. (See Affidavit, Exhibit A, ¶9.) For each and

⁴ Note that the statute directs that there must be sufficient funds “in the hands of the Treasurer” to pay any order before a school board may direct that it be paid. This further reinforces the conclusion that the funds in question are being held by the Treasurer, as trustee.

every account at issue in this lawsuit, the Treasurer is the “only lawful custodian” of the funds therein and, accordingly, holds those funds in trust.

B. The Treasurer Holds All of the Funds at Issue in Trust.

As this Court is aware, there are three different “pots” of money at issue. The Treasurer holds the funds from all of these “pots” in trust.

1. All funds invested and allocated are held in trust.

As to the claim respecting misallocation of investment income, the analysis of who holds the funds is simple. The Treasurer’s duties include investing the funds in its care. 105 ILCS 5/8-17(a)(9). The Treasurer is permitted to combine (*i.e.*, pool) for investment purposes the monies each district owns. 105 ILCS 5/8-7. These monies must be “accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the...school district...from which such investment was required.” *Id.* At all times relevant, the Treasurer did, in fact, pool investments. (See Affidavit, Exhibit A, ¶11.) In accordance with the School Code, as income is generated by these pooled investments, the Treasurer allocates that income to the different school districts. (Exhibit A, ¶12.)

By way of a simple example, if the Treasurer pools tax monies from the school districts to buy a bond, the income generated from that bond is then allocated to each district in its proportionate share. When the Treasurer allocates the investment income, *no money is actually paid to the school districts*. Rather, as 105 ILCS 5/8-7 provides, the income is merely “credited” on the books to each school district. The Treasurer simply makes a record as to the investment income earned and allocated to each district. (Exhibit A, ¶12.) The Treasurer – at all times – holds both the funds invested and the income generated by the investment in trust for the districts.

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 6 of 12

Thus, when Healy over-allocated investment income to LT, this just means he made a bookkeeping entry that credited LT with too much of the income the bond generated, and the other school districts too little of the income the bond generated. The TTO wants to correct this bookkeeping entry so the funds are properly allocated. The money at issue is and always has been in the custody of the Treasurer, who holds it in trust for the school districts.

2. **The funds LT never paid to the Treasurer for LT's *pro rata* share continue to be held in trust by the Treasurer.**

With respect to LT's non-payment of its *pro rata* share of the Treasurer's expenses, the issue of who holds the funds is equally easy. The School Code directs that each district "shall pay a proportionate share" of the Treasurer's compensation and expenses of office. 105 ILCS 5/8-4. At the end of each fiscal year, the Treasurer adds together its compensation and expenses of office and sends an invoice to each school district for the district's *pro rata* share of those expenses. (Exhibit A, ¶13.) The *pro rata* share is "determined by dividing the total amount of all school funds handled by the township treasurer by such amount of funds as belong to each such...district." 105 ILCS 5/8-4.

The next step in the process would be for each school district to pay its *pro rata* invoice by authorizing and directing the Treasurer to issue and sign a check (payable to the Treasurer). This is not, however, what LT did; rather, LT *never paid its pro rata share*. The funds in question have never left the Treasurer's hands because LT never directed the Treasurer to pay LT's *pro rata* invoice.

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 7 of 12

3. **Because the Treasurer paid for LT's annual audit, but should not have, the Treasurer also continues to hold those funds in trust.**

The School Code requires each school district to undergo and pay for its own annual audit. 105 ILCS 5/3-7. There is no dispute that each year LT underwent the required annual audit and that LT did not pay for its annual audit.⁵

The way LT should have proceeded was to, upon receipt of the auditor's invoice, prepare a check payable to the auditor. LT should have then sent an authorization and direction to the Treasurer to pay this check and identify this check on accompanying check register – just like LT would do for any other of LT's vendors. LT would have then presented the check to the Treasurer and the Treasurer – duly authorized – would have signed the check. LT then would be able to send the check to the auditor, thereby paying for its own audit.

Had this happened, the funds would have remained in the Treasurer's custody up until the moment the auditor deposited LT's check into the auditor's account. But that is *not* what happened. Rather, for the years in question, Healy paid for LT's annual audit and treated it an expense of the Treasurer's office. (Exhibit A, ¶¶13-17.) In other words, the funds used to pay LT's audit expenses were *not* from monies allocated to LT, nor were the expenses paid pursuant to LT's direction. Rather LT's audit invoices were paid from funds the Treasurer placed into an operations account that the Treasurer uses to pay the Treasurer's own expenses during the course of the fiscal year. (Exhibit A, ¶¶13-17.)

What is this operations account? At the end of each fiscal year, as described above, the Treasurer adds together its compensation and expenses of office and invoices each school district for the district's *pro rata* share of the Treasurer's compensation and expenses. But *during* the

⁵ LT argues that the School Code does not require that it actually pay for its own audit and even if the School Code did require this, Healy agreed to pay for LT's audit in any event. The TTO disagrees, but the merits of its position are not at issue in the present Motion.

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 9 of 12

fiscal year, the Treasurer still has payroll and bills. The Treasurer cannot tell its employees and vendors to wait to be paid until (a) the fiscal year ends and (b) until after each district pays its *pro rata* share. Accordingly, during the fiscal year, the Treasurer needs a source of funds.

In order to be able to fund its office during the fiscal year, the Treasurer moves funds from its main account (that holds the district's tax dollars and investment income) to an operations account. During the year, the Treasurer can then draw on this operations account to compensate the Treasurer and pay its expenses of office. (Exhibit A, ¶¶13-14.) The funds in the operations accounts are still owned by the school districts and the Treasurer still hold them in trust for the school districts. (Exhibit A, ¶14.) It is from this operations account that Healy paid LT's audit bills. (Exhibit A, 17¶.)

By doing this, Healy treated LT's audit bills as an expense of his own office. This means that LT did not pay its own audit bill from funds allocated to LT. It also means that each school district paid for its own audit *plus* its *pro rata* share of LT's audit. This was wrong.

LT's argument is that the audit fees in question were paid to the auditor and, therefore, left the Treasurer's custody, making them subject to the five-year statute of limitations. As the TTO acknowledged in its original Response, the *auditor* would certainly be able to make this argument. (See Resp., p. 8.) But the argument does not work as to LT. This is because the checks payable to the auditor *should have been debited from the funds the Treasurer had allocated to LT but otherwise continued to hold in trust.*

Because that did *not* happen, the funds that should have been used to pay LT's auditor were never actually used – and they are still being held by the Treasurer. LT never authorized and directed the Treasurer to pay for LT's audit, and so the funds never left the Treasurer's hands. The TTO merely seeks to make the bookkeeping entry that will result in LT being debited

the funds to pay for LT's audit, and the Treasurer's operations account to be credited those funds.

III. THE SCHOOL DIRECTORS CASE

In *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653 (1883), the Illinois Supreme Court dealt with the trust fund exception to the statute of limitations. District No. 5 levied property taxes that were collected and placed in the hands of the Treasurer. *Id.* at 655. The Treasurer, however, mistakenly credited the funds to District No. 1. *Id.* District No. 1 thereafter directed the Treasurer to pay those funds to run the schools within District No. 1 during the period 1870 to 1873. *Id.* District No. 5 realized what had happened and sued District No. 1 to recover the funds. *Id.* District No. 1 raised the statute of limitations as a defense. 105 Ill. at 655-56.

The Supreme Court explained that the Treasurer was a trustee of public school funds and that the monies the Treasurer held were being held in trust. *Id.* at 656. So long as the monies remained in the Treasurer's hands, this was so. Once the Treasurer paid the funds to District No. 1, however, then those funds left the Treasurer's hands and were no longer being held in trust. *Id.* At that point, District No. 1 held funds that rightfully belonged to District No. 5, but "there was no proper trust relationship between [District No. 1] and [District No. 5]." (Conversely, there was a trust relationship between the Treasurer and the school districts.) Because the funds were no longer being held in trust, an exception to the limitations period did not exist. *Id.* Fast forward over one-hundred years later, and the Treasurer today still holds funds in trust for each school district. LT never directed that the Treasurer pay its audit bills, and so the Treasurer continues to hold all of the monies in question in trust.

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 10 of 12

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 11 of 12

Another case briefed by the parties and shedding light on this issue is *Trustees of School v. Arnold*, 58 Ill. App. 103 (4th Dist. 1895). In *Arnold*, the Treasurer mishandled various funds in his hands during the period 1863 to 1888. *Id.* at 104. The Trustees sued the Treasurer (on his official bond) and the Treasurer asserted the limitations period as a defense. *Id.* at 105. The Trustees responded by arguing that the limitations period did not apply because the monies at issue had been held in trust by the Treasurer, and also that a public right was involved. *Id.*⁶

The Illinois Supreme Court noted that “Defendant’s counsel concede the statute of limitations cannot be pleaded to bar a public right, a public fund, or school funds strictly belonging to the State.” 58 Ill. App. at 107. The Court then explained that the Treasurer is charged under Illinois law, just like in this case, to be the “only lawful depository and custodian of all township and district school funds.” *Id.* The Treasurer had no authority to divert the funds in his care or misuse them. *Id.* The school districts were the beneficiary of the funds the Treasurer held in trust, and “it was not intended the statute of limitations, applicable to any ordinary debt, should be applied to any part of such a trust fund.” *Id.* at 108. Accordingly, the Court concluded: “This court holds that as to any school fund in the hands of the treasurer, the pleas of the statute of limitations were not well pleaded...” *Id.* at 110.

IV. CONCLUSION

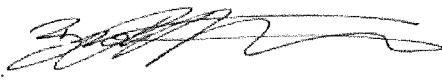
The TTO brings this action for the fiscal benefit of the school districts it serves. At all times it held the monies at issue in trust, and it continues to hold them in trust to this day. The TTO also seeks to enforce a “public right” as the Supreme Court has more recently described

⁶ This second basis is the “public right” exception to the statute of limitations. This exception was more recently addressed by the Illinois Supreme Court in *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983) and *Board of Education v. A.C.&S, Inc.*, 131 Ill. 2d 428 (1989). The “public right” exception provides an additional basis for denying LT’s Motion.

that phrase in *City of Shelbyville* and *AC&S*. For these and the other reasons set forth in its original Response, the TTO respectfully requests that this Court deny LT's Motion.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: 
One of its attorneys.

Gerald E. Kubasiak
kubasiak@milleranfield.com
Barry P. Kaltenbach
kaltenbach@milleranfield.com
Gretchen M. Kubasiak
kubasiakg@milleranfield.com
Miller, Canfield, Paddock & Stone, P.L.C.
225 West Washington, Suite 2600
Chicago, Illinois 60606
(312) 460-4200
Firm No. 44233

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 12 of 12

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2018, I electronically filed with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/Barry P. Kaltenbach

30573352.1\154483-00001

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
CALENDAR: 14
PAGE 1 of 6
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

EXHIBIT

A

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

TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12 EAST,)
)
Plaintiff,) No. 13 CH 23386
)
vs.) Judge Sophia H. Hall
) Calendar 14
LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)
)
Defendants.)
)

**AFFIDAVIT OF DR. SUSAN BIRKENMAIER IN SUPPORT OF THE TTO'S
SUPPLEMENTAL RESPONSE TO LT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

The undersigned, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

1. My name is Susan Birkenmaier, Ed.D. I am presently the Lyon's Township School Treasurer ("Treasurer"). I was appointed to my position by the Plaintiff in this case and have served continuously as Treasurer since October 2013. Prior to this, I was Superintendent at Lemont-Bromberek School District 113a, and Director of Operations for LaGrange Highlands School District 106 (one of the school districts I currently serve as Treasurer).

2. I have a Bachelor of Arts in Political Science and a Master of Arts in Public Affairs from Northern Illinois University. I further have a Doctor of Education in

Educational Leadership and Administration, General, from Indiana University. I am licensed by the State of Illinois as a Chief School Business Official.

3. I am submitting this Affidavit in support of Plaintiff's Supplemental Response to the motion for summary judgment filed by the Defendant, Lyons Township High School Dist. No. 204 ("LT").

4. I have certain statutory duties as Treasurer, including generally managing approximately \$500,000,000 each year in revenue and investments. This amount consists of public tax dollars, other miscellaneous income from the school districts, and income generated from investing these sums. The Treasurer does not own these amounts, but rather the Treasurer is the custodian of them, as trustee, for the school districts.

5. When a school district wants to make a payment by check, such as for payroll or to pay a vendor, the school district needs to send a formal, written authorization and direction to the Treasurer. The school district also provides with this a register to the Treasurer identifying the specific checks it wants issued, including identify the check number, payee, date, and specific amount of payment.

6. Attached as Exhibit B1 and B2 to the Supplemental Response are copies of two such authorization and directions, and check registers, from LT for February 2016. This month was chosen as a sample month for no particular reason. Exhibit B1 is for LT's payroll, and Exhibit B2 is for LT's accounts payable (non-payroll).

7. In the case of LT, it prepares its own checks. So after submitting the authorization and direction, and check register, LT will bring checks to the Treasurer's office for signature and my signature will be electronically affixed to them. LT can then send the checks to the payees.

8. Other school districts do not prepare their own checks. They also provide the Treasurer with authorization and direction, and a check register, but my office will prepare the checks for them and I will electronically sign them. Those school districts can then send the check to the payee.

9. Regardless of whether the school district prepares its own check, or the Treasurer prepares the check, the accounts on which the checks are being drawn can vary, depending upon the purpose of the payment (e.g., for payroll, for a non-payroll vendor) and the school district. Regardless of the individual bank account upon which the check is drawn, however, the Treasurer is the only person with signature power on that account. (The President of the Township Trustees also has signature power, but as a practical matter the Treasurer is the one who signs the checks.) The school districts do not have signature power on the bank accounts on which the checks are drawn. Those accounts are in the name of the Treasurer. The school districts cannot withdraw money from these accounts or issue signed checks on these accounts.

10. When paying by means other than a check, such as a direct deposit, the process obviously differs slightly, but the same basic principles exist. The school districts must appropriately authorize and direct the Treasurer to make the payment, and then the Treasurer must make the payment. The school districts cannot do so themselves.

11. The School Code permits the Treasurer, when managing and investing the money belonging to member districts, to combine (or "pool") the money being invested. In fact, at all times relevant to this lawsuit, the Treasurer did pool the investments.

12. From time to time, the Treasurer credits earnings on its investments to each member district. The Treasurer does so through a bookkeeping entry. The Treasurer does

not issue a check to the districts for their share earnings (or "pay" the district in any other way). At all times, these funds remain in the custody of the Treasurer.

13. I receive compensation for serving as Treasurer and, as Treasurer, I also have certain expenses of office. This included, just by way of example, leased office space, additional staff, computers, and office supplies. In order to pay for all of these items, my office invoices each of its member districts on an annual basis for their proportionate share of the prior fiscal year's expenses. (My office uses a fiscal year running from July 1 to June 30 of the following year.)

14. During the fiscal year, however, the Treasurer still needs to make payroll and pay its bills. The Treasurer cannot wait until the close of the fiscal year, and after it has collected its pro rata share from each school district, to pay its employees and its vendors. Accordingly, *during* the fiscal year, the Treasurer moves funds from its main account (that holds the district's tax dollars and investment income) to an operations account. During the year, the Treasurer can then draw on this operations account to pay the Treasurer's expenses and compensation. The funds in this operations account still belong to the school districts and the Treasurer still holds them as trustee.

15. The sole source of revenue to pay for the Treasurer's compensation and expenses of office things comes from the school districts. The Treasurer (and indeed the Plaintiff as a public body) does not have another source of revenue. If one of the districts does not pay its invoice, this creates a shortfall in funding.

16. In accordance with Illinois law, the Treasurer also hires an accounting firm to undertake an annual audit of the Treasurer's office. The cost of this audit is one of the other expenses of the Treasurer's office.

17. During the relevant time period, each school district other than LT paid for its own annual audit (with three discrete exceptions). LT, on the other hand, did not pay for its own annual audit. Rather, the Treasurer at the time paid for LT's annual audit from the operations account and treated that cost as expense of the Treasurer's office. I explain all of this in more detail with reference to supporting documents in the Affidavit in Support of TTO's Motion for Summary Judgment that I understand was filed this past summer. To the extent necessary, I adopt and incorporate the relevant portions of that Affidavit.

Susan Birkenmaier 1/22/2018
Susan Birkenmaier, Ed.D. Date

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
CALENDAR: 14
PAGE 1 of 6
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

EXHIBIT

B1

LYONS TOWNSHIP HIGH SCHOOL

P 4

DISTRICT 204

Summary of 2/19/2016 Payroll

Total check numbers 7852-7964

Additional Reports

- Payroll Check Register
- Payroll Deduction Register
- Payroll Process Summary
- Payroll Cover Sheet
- Payroll by Gross Funds

PAID
 PAID
 BY: *[Signature]*

Void Checks _____

The undersigned hereby certifies the payroll listing in the net amount of \$ 1,260,188.29 and authorizes payment of the same by the School Treasurer of Township 38, range 12.

Adjusted Gross	\$	1,956,655.77	↓ 2476013039
Direct Deposit	\$	1,143,263.34	↑ FEB 17 2016 <i>lc</i>
Checks	\$	116,924.95	↑

Kathryn Moran
 Kathryn Moran
 Purchasing and Acct. Mgr.

2/12/16
 Date

TREASURER REPORTS

PAYROLL RUN DATE 2/19/16

Payroll Expenses for Employer by Fund

10 - EXP TOTAL \$ 2,061,875.29

20 - EXP TOTAL \$ 173,741.36

50 - EXP TOTAL \$ 103,985.49

FINAL TOTAL \$ 2,339,602.14

PAYROLL DEDUCTION TOTALS

10 - LIAB

Fund 10 Total \$ 696,467.48

Liabilities

PAYROLL LIABILITIES TOTALS

10 - LIAB

Fund 10 Total \$ 382,946.37

Liabilities

LYONS TRF HSD 204, IL
Check Summary (Net Amounts Only) for Payroll Run Number:Regul / Regular Payroll
CHECK DATE 02/15/2016 - Check Number Sequence

CHECK NUMBER	NAME KEY	NAME	NET PAY
--------------	----------	------	---------

000007852			
000007853			
000007854			
000007855			
000007856			
000007857			
000007858			
000007859			
000007860			
000007861			
000007862			
000007863			
000007864			
000007865			
000007866			
000007867			
000007868			
000007869			
000007870			
000007871			
000007872			
000007873			
000007874			
000007875			
000007876			
000007877			
000007878			
000007879			
000007880			
000007881			
000007882			
000007883			
000007884			
000007885			
000007886			

ELECTRONICALLY FILED
 FEB 15 2016 4:09 PM
 PACS
 2013 OCT 23 386
 000007855
 000007856
 000007857
 000007858
 000007859
 000007860
 000007861
 000007862
 000007863
 000007864
 000007865
 000007866
 000007867
 000007868
 000007869
 000007870
 000007871
 000007872
 000007873
 000007874
 000007875
 000007876
 000007877
 000007878
 000007879
 000007880
 000007881
 000007882
 000007883
 000007884
 000007885
 000007886

CHECK DATE 02/19/2016 - Check Number Sequence

CHECK NUMBER NAME KEY NAME NET PAY

000007887				
000007888				
000007889				
000007890				
000007891				
000007892				
000007893				
000007894				
000007895				
000007896				
000007897				
000007898				
000007899				
000007900				
000007901				
000007902				
000007903				
000007904				
000007905				
000007906				
000007907				
000007908				
000007909				
000007910				
000007911				
000007912				
000007913				
000007914				
000007915				
000007916				
000007917				
000007918				
000007919				
000007920				
000007921				

ELECTRONICALLY FILED
 1/22/2018 4:09 PM
 2013-CH-23386
 HSD
 02/12/2016

4pacpv02.p

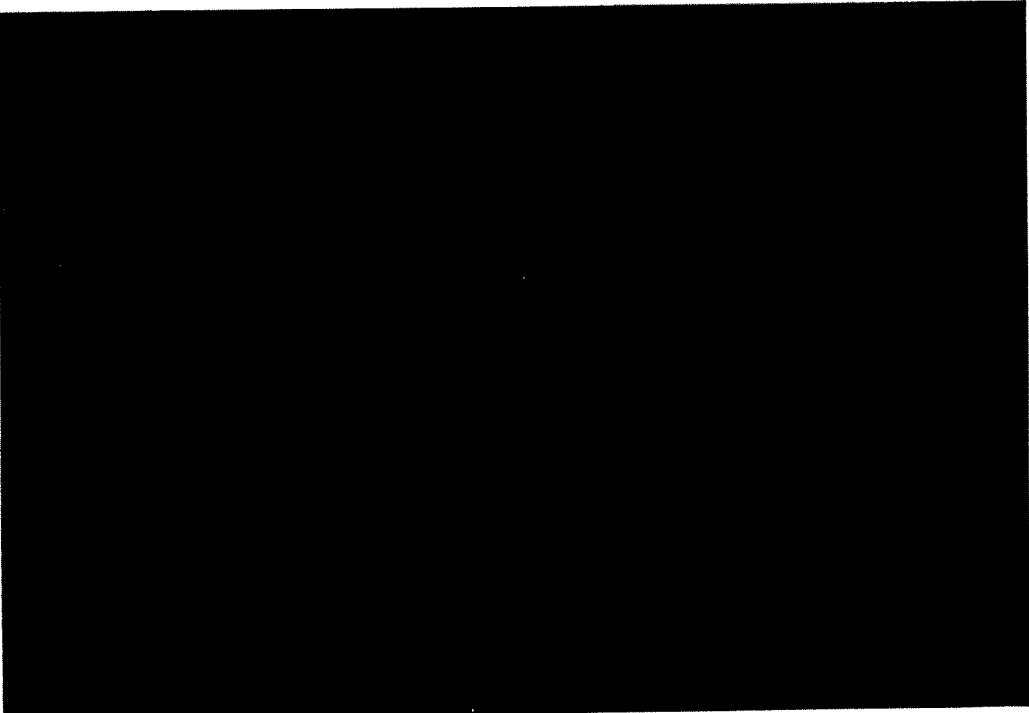
05.15.10.00.00-010006

Check Summary (Net Amounts Only) for Payroll Run Number: Regul / Regular Payroll

CHECK DATE 02/19/2016 - Check Number Sequence

CHECK NUMBER NAME KEY NAME NET PAY

000007922
 000007923
 000007924
 000007925
 000007926
 000007927
 000007928
 000007929
 000007930
 000007931
 000007932
 000007933
 000007934
 000007935
 000007936
 000007937
 000007938
 000007939
 000007940
 000007941
 000007942
 000007943
 000007944
 000007945
 000007946
 000007947
 000007948
 000007949
 000007950
 000007951
 000007952
 000007953
 000007954
 000007955
 000007956



ELECTRONICALLY FILED

1/22/2018 4:09 PM
 IRS-CH2386
 06
 0007940
 0007941
 0007942
 0007943
 0007944

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
CALENDAR: 14
PAGE 1 of 6
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

EXHIBIT

B2

V15

CHECKS
413686-413760 R

DISTRICT #204
SUMMARY OF BILLS

DATE: 2/25/2016

LIABILITY
OTHER REVENUE

PAID
BY: *MB*

FUND #10 - EDUCATION FUND
WEEKLY BILLS AS HEREIN LISTED \$ 134,801.77

FUND #20 - OPERATIONS BUILDING MAINT FUND
WEEKLY BILLS AS HEREIN LISTED \$ 166,007.96

FUND #40 - TRANSPORTATION FUND
WEEKLY BILLS AS HEREIN LISTED \$ 2,100.00

GRAND TOTAL \$ 302,909.73 R

THE UNDERSIGNED HEREBY CERTIFIES ACCOUNTS PAYABLE LISTING IN THE AMOUNT OF
\$302,909.73 AND AUTHORIZES PAYMENT OF THE SAME BY THE SCHOOL
TRUSTEES OF TOWNSHIP 38, RANGE 12 EAST

Kathryn F Moran
KATHRYN F MORAN

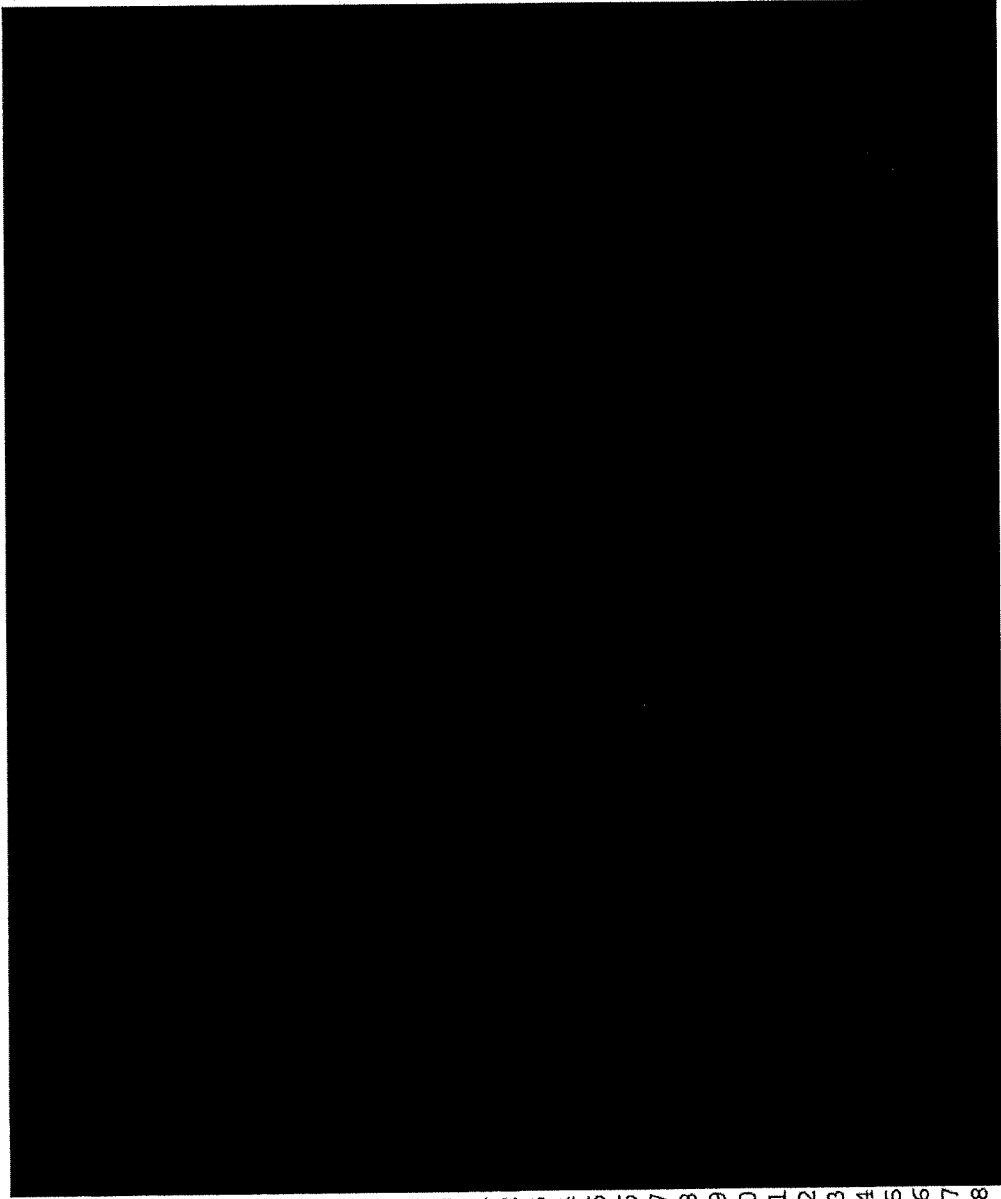
25-Feb-16
Date

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 2 of 6

LYONS TWP HSD 204, IL
Check Summary

3apckp07.p
05.15.10.00.00-010020

Check Nbr Vendor Name Check Date Check Amount



413686
413687
413688
413689
413690
413691
413692
413693
413694
413695
413696
413697
413698
413699
413700
413701
413702
413703
413704
413705
413706
413707
413708
413709
413710
413711
413712
413713
413714
413715
413716
413717
413718

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386

LYONS TWP HSD 204, IL
Check Summary

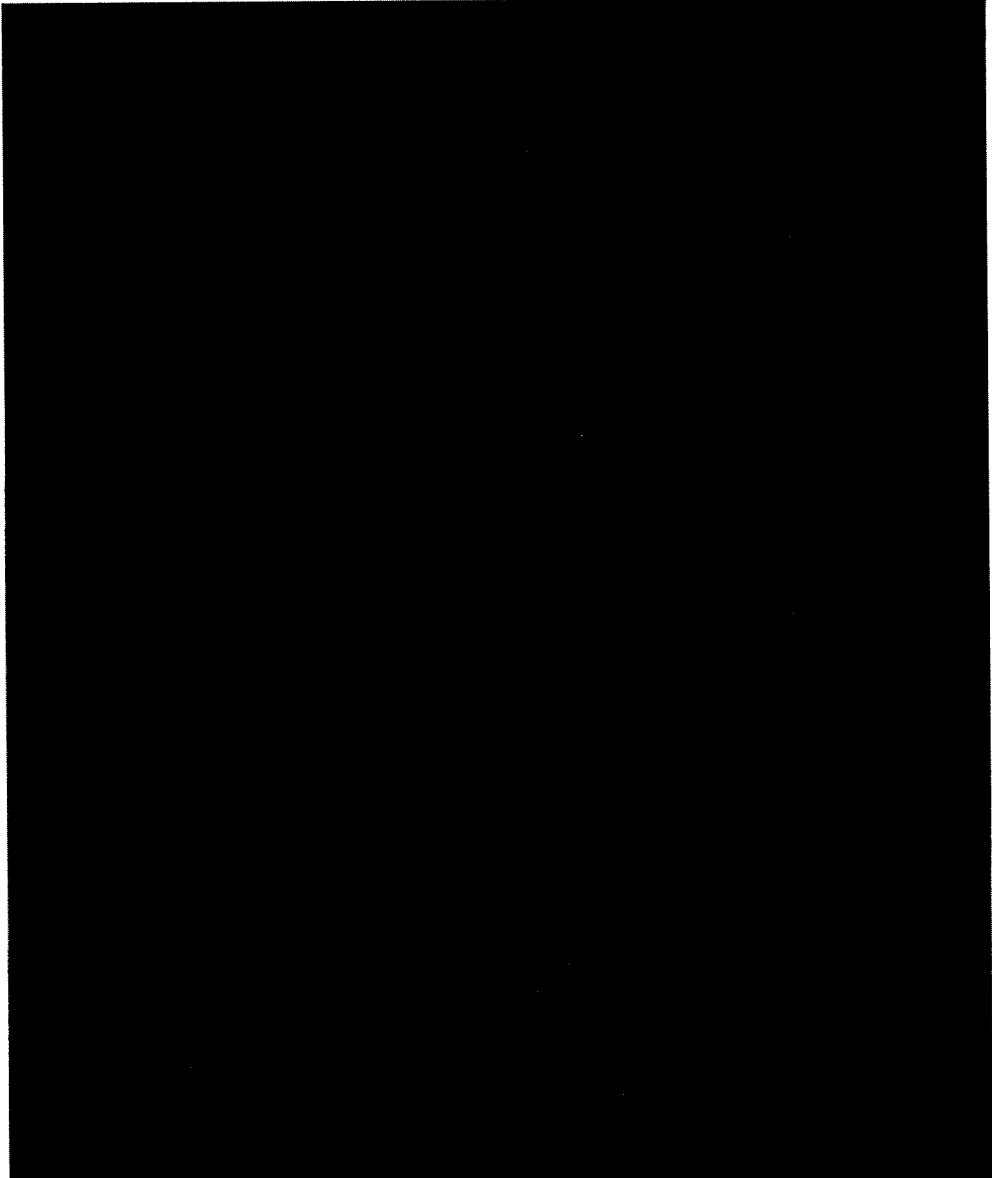
3apckp07.p
05.15.10.00.00-010020

Check Nbr Vendor Name

Check Date

Check Amount

413719
413720
413721
413722
413723
413724
413725
413726
413727
413728
413729
413730
413731
413732
413733
413734
413735
413736
413737
413738
413739
413740
413741
413742
413743
413744
413745
413746
413747
413748
413749
413750
413751



ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
FILED

LYONS TWP HSD 204, IL
Check Summary

3apckp07.p
05.15.10.00.00-010020

Check Nbr	Vendor Name	Check Date	Check Amount
413752			
413753			
413754			
413755			
413756			
413757			
413758			
413759			
413760			
75	Computer	Check(s) For a Total of	302,909.73

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 5 of 6

LYONS TRF HSD 204, IL
Check Summary

3apckp07.p
05.15.10.00.00-010020

0	Manual	Checks For a Total of	0.00
0	Wire Transfer	Checks For a Total of	0.00
0	ACH	Checks For a Total of	0.00
75	Computer	Checks For a Total of	302,909.73
Total For 75	Manual, Wire Tran, ACH & Computer Checks		302,909.73
Less 0	Voided	Checks For a Total of	0.00
		Net Amount	302,909.73

ELECTRONICALLY FILED
1/22/2018 4:09 PM
2013-CH-23386
PAGE 6 of 6