

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

TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12)
EAST,)
) No. 13 CH 23386
Plaintiff,)
) Judge Thomas R. Mulroy
vs.) Commercial Calendar I
)
LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)
)
Defendants.)

5951430

PLAINTIFF’S MOTION FOR JUDGMENT AS A MATTER OF LAW ON
DEFENDANT’S SECOND AFFIRMATIVE DEFENSE: STATUTE OF LIMITATIONS
(ALTERNATIVELY, MOTION TO RECONSIDER)

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“Trustees”), by its undersigned counsel, THE QUINLAN LAW FIRM, LLC and MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., moves this Court for entry of summary judgment against the Defendant, Lyons Township High School District No. 204 (“LT”), on LT’s Second Affirmative Defense: Statute of Limitations.

I. PROCEDURAL BACKGROUND

The Trustees commenced this action on October 26, 2013 seeking a declaratory judgment authorizing the Lyons Township School Treasurer (“Treasurer”) to make certain bookkeeping entries to address unlawful financial benefits a *former* Treasurer provided to LT during the time period Fiscal Years 2000 through 2013. The effect of relief the Trustees seek would benefit the other school districts that the Treasurer serves by roughly \$4.7 million.

In May 2017, LT filed a Motion for Partial Summary Judgment based upon its Second Affirmative Defense, arguing that this lawsuit was subject to the five-year “catchall” statute of

limitations set forth in 735 ILCS 5/13-205. The Trustees filed a Response to that Motion arguing that well-recognized exceptions to the statute of limitations period were present, including that they were enforcing a “public right” and that the Treasurer was holding the applicable public funds in trust.

During oral argument in December 2017, Judge Sophia H. Hall requested additional briefing, and the parties filed supplemental briefs in January 2018. Meanwhile, the Trustees had filed their own Motion for Summary Judgment in July 2017, addressing far more issues, but with respect to the statute of limitations issue the Trustees adopted and incorporated their Response to LT’s Motion for Partial Summary Judgment.

On February 20, 2018, Judge Hall found that the “public right” exception to the statute of limitation appeared to be satisfied, but declined to rule on that issue as a matter of law. Judge Hall denied the remainder of LT’s Motion without prejudice. (A copy of this Order is attached as Exhibit 1; a copy of the Report or Proceedings is attached as Exhibit 2.)

Judge Hall never ruled upon the Trustees’ Motion for Summary Judgment. In June 2018, the Trustees filed a Revised Motion for Summary Judgment, wherein the Trustees formally requested that Judge Hall enter summary judgment against LT on the statute of limitation issue (not merely deny LT’s Motion). LT objected to the page count and so the Trustees filed a Second Revised Motion in July 2018. That Motion remains pending and is awaiting this Court’s ruling.

The Trustees’ position is that this Court should go beyond Judge Hall’s mere denial of LT’s Motion for Partial Summary Judgment, and should enter partial summary judgment against LT on the issue of whether the statute of limitations applies to this case. The parties agree that the underlying facts material to this issue are not in dispute and that the issue is ripe for summary disposition.

II. MATERIAL FACTS NOT IN DISPUTE

A. The Township Trustees of Schools and Treasurer.

Plaintiff is a body politic comprised of three Township Trustees of Schools who are elected by voters within Lyons Township. (See Amend. Compl. and Answer, Exs. 3 and 4 at ¶¶ 1, 5; 105 ILCS 5/5-2.) The Trustees appoint the Treasurer. (See *id.*; 105 ILCS 5/8-1.) The Treasurer provides financial services for 11 school districts within Lyons Township, including LT.. (See Exs. 3 and 4 at ¶ 6.) These school districts administer 38 schools educating about 20,000 students. (See *id.* at ¶ 7.) The Treasurer also provides financial services for two other educational, public bodies: the LaGrange Area Department of Special Education, which serves 15 school districts; and the West 40 Intermediate Service Center, which serves 40 school districts. (See Exs. 3 and 4 at ¶ 6.) Collectively, these are referred to as the “Districts.”

The Treasurer is statutorily obligated to, *inter alia*, “[c]ollect from the township and county collectors the full amount of taxes levied by the school boards in his township;” “[b]e responsible for the receipts, disbursements and investments arising out of the operation of the school districts under his supervision; and “[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). In other words, the Treasurer is required by statute to collect and manage the public funds of each District, invest those funds, and pay the bills of those Districts as they direct. The Treasurer is the “only lawful custodian” of these public funds. 105 ILCS 5/8-7.

B. The Treasurer Does Not Have Its Own Funds.

Because the Treasurer is the *only* lawful custodian of the public funds, this means the Districts are not custodians of their own funds. When a District wishes to pay a bill, for example, Section 8-17(a)(9) provides that the *Treasurer* actually pays the bill. The Districts use an “order”

as provided by Section 8-16 to direct the Treasurer to make payment. Section 10-18, however, provides that school districts may not issue such an “order” “unless at the time there are sufficient funds *in the hands of the treasurer* to pay it.” (Emphasis added.) This means that when a District pays its bills, the District is actually drawing on public funds the Treasurer has allocated to that District, but those funds remain in the custody of the Treasurer. Indeed, while the Treasurer creates bank accounts for the Districts to use, *only the Treasurer has signature power over those accounts*. (See Affidavit of Dr. Susan Birkenmaier, Exhibit 5, at ¶¶ 5-10.)

One of the Treasurer’s other duties is investing the property taxes collected for the Districts. (See 105 ILCS 5/8-17(a)(9).) The Treasurer is permitted to combine (*i.e.*, pool) for investment purposes the monies in its custody. 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. (Ex. 5 at ¶ 11.)

Each District has its allocable share of the pooled investments and its share of the investment income, and the Treasurer is obligated to properly credit these amounts to each District. When the investments produce income, usually interest earned on bonds, the Treasurer makes a bookkeeping entry allocating that income amongst the Districts. (Ex. 5 at ¶ 12.) The Treasurer does not actually pay this income to the Districts, but rather the income stays in the Treasurer’s custody. (Ex. 5 at ¶ 12.)

Providing these services costs money. The Treasurer is compensated for his or her services, and the Treasurer has certain expenses of office, *e.g.*, leased office space, additional staff, office supplies. (Exs. 3 and 4 at ¶ 24; Ex. 5 at ¶ 13.) Neither the Trustees nor the Treasurer,

however, have a tax base or any other source of revenue to pay for these items. (Ex. 5 at ¶ 15.) To address this, the School Code provides that each District “shall pay a proportionate share” of the Treasurer’s compensation and expenses of office. 105 ILCS 5/8-4. The proportion of each district’s share “shall be 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.” *Id.*

At the end of each Fiscal Year, the Treasurer totals its expenses and sends an invoice to each District for that District’s proportionate share based upon the statutory formula. (Ex. 5 at ¶ 13.) The School Code, thus, requires the Treasurer to bill in arrears. The Treasurer cannot wait until the end of the Fiscal Year, however, to actually pay its expenses, and so the Treasurer pays those expenses as they are incurred by using the Districts’ funds in its custody. (Ex. 5 at ¶ 14.) This creates a structural deficit until the Districts pay their proportionate share. If a District does not pay its proportionate share, the deficit continues to grow.

C. The Three Claims at Issue.

During most of the period at issue the Treasurer was Robert Healy. As the result of an investigation of Robert Healy that the Trustees conducted in 2012, the Trustees discovered that Healy was embezzling public funds in his care. This evidence was immediately turned over to the Cook County State’s Attorney and Healy was prosecuted and convicted. The Trustees’ investigation also uncovered that Healy had provided certain financial benefits to LT that were to the detriment of the other Districts and contrary to the School Code. These benefits form the Trustees’ three claims in this case, as set forth below.

First, LT’s did not pay its proportionate share of the Treasurer’s compensation and expenses of office for Fiscal Years 2000 through 2013. LT admits it did not pay its share, but argues that the parties entered into an agreement in 2000 that excused LT from paying its share.

The Trustees dispute that such an agreement existed. This alleged “agreement,” however, is not at issue in the instant Motion. The sole issue is whether the statute of limitations prohibits the Trustees from addressing the \$2,628,807 shortfall created by LT’s non-payment of its proportionate share.

Second, during Fiscal Years 1995 through 2012, Healy over-allocated investment income to LT totaling \$1,574,636.77. Although LT can argue why it believes the Trustee’s analysis of this issue is erroneous, such is not at issue in this Motion. The sole issue, again, is whether the limitations period applies to the Trustees’ efforts to rectify these over-allocations.

Third, during the period Fiscal Year 1993 through 2012, LT engaged an accounting firm (either Baker Tilly or its predecessors) to perform the statutorily required annual audit of LT and to perform other accounting work for LT. (See 105 ILCS 5/3-7.) For inexplicable reasons, Healy had the Treasurer’s office pay for this work and treat it as an expense of office, in the total amount of \$511,068.60. Each District was then invoiced for its proportionate share of this amount. This means that every District paid for its own audit *plus* their proportionate share of LT’s audit. The only current issue is whether the limitations period bars this claim.

III. ARGUMENT

No limitations period applies to any of the three claims at issue because (i) the Treasurer has at all times held the applicable public funds in trust, and/or (ii) the Trustees are seeking to enforce a “public right” as the Supreme Court defines that phrase. If either exception applies, no limitations period applies to this action.

A. The Public Funds at Issue Are Held in Trust.

Illinois law provides that school treasurers hold the public funds in their care in trust and as to those funds no statute of limitations may be asserted. In *Trustees of Schools v. Arnold*, 58

Ill. App. 103 (4th Dist. 1895), certain trustees of schools filed suit against a school treasurer alleging he mishandled public funds in his care over the preceding 24 years. *Id.* at 104. The school treasurer asserted the statute of limitations as a defense. The Appellate Court rejected that any limitations period affect the case because “as to any school funds in the hands of the treasurer, the plea of the statute of limitations were not well pleaded” *Id.* at 108-10. Although LT has argued that Appellate Court decisions from this era are not binding upon this Court, this is not the only decision to support the Trustees’ position that claims as to public funds in the care of the Treasurer are not subject to a limitations period.

In *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653, 656 (1883), a township treasurer erroneously paid certain taxes it had collected to School District No. 1, instead of paying those taxes to School District No. 5. District No. 5 filed suit against District No. 1 to recoup the erroneous payment. District No. 1 asserted the statute of limitations as a defense. While the Supreme Court found that the statute of limitations barred recovery, this decision was based on the fact that the money had *already been paid out by the treasurer to District No. 1* and was no longer considered public funds being held in trust. The Court stated:

as long as he [the treasurer] held the money it was a trust fund in his hands, but when he paid it out to appellee, or on its orders, it was not a trust fund in appellee’s hands which would exclude the operation of the Statute of Limitations.

Id. at 656.

School Directors makes clear that the taxes, while still in the hands of the township treasurer, were a public trust fund. In making its ruling, the Court distinguished the relationship between the two school districts, as opposed to their relationship with the township treasurer, stating “[t]here was no proper trust relationship between [District No. 5] and [District No. 1],” and describing the litigation between the school districts as a “personal suit....” *Id.*

The inverse of this fact pattern is why the limitations period is *not* applicable in this case. There is unquestionably a “proper trust relationship” between the Treasurer and LT. The plain language of the School Code establishes this, as the Treasurer is the “only lawful custodian” of the funds belonging to the school districts. 105 ILCS 5/8-7. Because all of the funds at issue are being held by the Treasurer, they are “a trust fund in his hands,” as explained in *School Directors*, which “would exclude the operation of the Statute of Limitation.” 105 Ill. at 656.

Likewise, the limitations period was held not applicable in *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876). In that case, pursuant to statute, Logan County collected and held certain tax monies for the benefit of the City of Lincoln. *Id.* at 158-59. The City brought suit to collect the monies that should have been paid to it. *Id.* Logan County asserted the limitations period as a defense. *Id.* The Illinois Supreme Court rejected this defense, holding that because Logan County had a lawful obligation to hold the funds for the City, the City’s claims were not subject to the limitations period. *Id.* at 158.

Here, because the Treasurer holds all of the public funds at issue in trust for the Districts, no limitations period is applicable so long as those public funds remained in the hands of the Treasurer. The undisputed facts show that the Treasurer, to this day, still holds those funds.

With respect to LT’s failure to pay its proportionate share of the Treasurer’s compensation and expenses, it is inarguable that the funds remain in the Treasurer’s hands because LT has never directed those funds to be paid in the first instance.

With respect to investment income that was over-allocated to LT, when pooled investments produce income, the income is not “paid” to each District, *i.e.*, the Treasurer does not issue a check. Rather, the Treasurer only makes a bookkeeping entry reflecting that the

income has been credited to each District. (Ex. 5 at ¶ 12.) The Trustees seek declaratory relief that the Treasurer may make such entries.¹

With respect to the accounting costs, if the Trustees were suing *Baker Tilly*, the case might be analogous to *School Directors*, because payments made to Baker Tilly are certainly no longer being held in trust by the Treasurer. But the Trustees are not suing Baker Tilly for having been wrongfully paid; rather, they seek a declaratory judgment that the Treasurer may properly reallocate the public funds in the Treasurer's custody so that LT is properly charged for LT's accounting costs and the other Districts are reimbursed for having paid those costs.

For these reasons, the applicable public funds have been at all time held in trust by the Treasurer, and under the authority of *Arnold*, *School Directors*, and *City of Lincoln* the Trustees lawsuit is not subject to the statute of limitations.

2. The Trustees Are Enforcing a Public Right.

Under the common-law doctrine of "*nullum tempus occurit regi*," "the statute of limitations may not be asserted against the State or its county or municipal subdivisions as plaintiffs in actions involving 'public rights,'" *City of Shelbyville v. Shelbyville Restorium, Inc.* 96 Ill. 2d 457, 459 (1983). The rationale for the doctrine is similar to the reasoning underlying the general inapplicability of *laches* to governmental entities: the policy that the public should not suffer because of the negligence of its officers and agents in failing to promptly assert causes of action belonging to the public, *Id.* at 461; *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 472 (1989).

¹ The Treasurer is not the proper party-plaintiff to bring this lawsuit so the Trustees brought the lawsuit seeking authority for the Treasurer to make the requested bookkeeping entries. See 105 ILCS 5/5-2 (authorizing Trustees to bring suit); *Lynn v. Trustees of Schools*, 271 Ill. App. 3d 539, 543 (4th Dist.1933) (holding the Treasurer would not be the proper party to bring suit).

In *Shelbyville*, a single political entity (the City of Shelbyville) sued a homebuilder for the homebuilder's failure, 13 years earlier, to abide by its annexation agreement and construct certain roadways in a subdivision. 96 Ill. 2d at 458. The City had, at its own expense, constructed some of those streets and repaired others. *Id.* at 458-59. The City sought money damages to compensate it for the work it had done and that still remained to be done. *Id.* Despite the fact that a single political entity was suing a single defendant for breach of an annexation agreement, the Court held that the limitations period did not apply because the City was enforcing a "public right." *Id.* at 464. The Court's reasoning was that if the City could not recover the funds it would "affect the city's finances and may impair its ability to build or oversee the construction or maintenance of streets within its jurisdiction in the future." *Id.*

Here, the Trustees are a single body politic, but unlike the City of Shelbyville, this suit is effectively on behalf of the other Districts and public schools the Treasurer serves. Certainly, the Treasurer is not charged with building and maintaining streets; but this does not distinguish this case from *Shelbyville*. The Treasurer is charged with managing the public funds of the Districts, and those Districts are charged with educating roughly 20,000 students in their care. Reallocating the total amount of \$4,714,511 in public funds at issue in a proper manner permits the other Districts to use that money to fulfill their obligation to provide public school education. This is enforcing a "public right" in accord with *Shelbyville*'s holding.

Six years after *Shelbyville*, the Supreme Court again addressed the concept of "public rights" in *A C & S*, and set forth a three-factor test to determine whether a "public right" was at issue. In *A C & S*, thirty-four school districts sought to recover from the asbestos industry the cost of repairing or replacing asbestos-containing materials. 131 Ill. 2d at 436. The defendants

argued a “public right” was not involved because the remediation involved only a select number of school buildings. *Id.* at 472-74.

The Supreme Court explained that a “public right” need not be an interest affecting the entire State; rather a plaintiff need only show a “sufficient interest in the general public.” *Id.* at 474. The Court also set forth the three-factor test to determine whether a public right is involved: (i) the effect of the interest on the public; (ii) whether there is an obligation on the public body to act; and (iii) the extent to which public funds must be expended. *Id.* at 476 (citing *Shelbyville*, 96 Ill. 2d at 464-65). Each of these three factors, examined below, support the Trustees’ position.

With respect to the **first factor**, the Trustees effectively bring this lawsuit on behalf of all of the other Districts, along with the schools and students in those districts. LT has argued that this is merely a lawsuit between two governmental bodies, but this overlooks the undisputed facts that the \$4.7 million at issue will be allocated amongst the other Districts. LT blinds itself from the inescapable logic that if LT was over-allocated income, the other Districts were necessarily under-allocated income; or that if LT does not pay its proportionate share, the other Districts are directly affected. Because the Trustees and the Treasurer do not have their own source of funds, they cannot finance the deficit created by LT’s failure to pay its proportionate share. If LT does not pay its share, ultimately, that deficit must be apportioned amongst all the other Districts – neither the Trustees nor the Treasurer can “make up” the shortfall.

With respect to this first factor, Judge Hall agreed with the Trustees, stating “the effect of the interest on the public, the handling of that money does have an interest in the public in terms of the monies available to address the operation of the schools.” (Ex. 2 at 8:19-23.)

With respect to the **second factor**, LT has previously argued that the School Code does not require the Trustees to have filed this lawsuit. The issue, however, is not whether state law

obligates a *lawsuit*, but rather whether state law obligates the problem be addressed. In neither *Shelbyville* nor *A C & S* did the statutes at issue require the political bodies to file a lawsuit. Rather, it imposed upon them an obligation to take actions (repairing roads and remediating asbestos), and the public bodies filed suit to recoup the funds at issue in those actions.

The Treasurer also has statutory obligations. The Treasurer is “the only lawful custodian of all school funds...and *shall* demand receipt for and safely keep” those funds. 105 ILCS 5/8-7. The Treasurer also has a statutory duty to “[b]e responsible for receipts, disbursements and investments arising out of the operation of the school district under his supervision.” 105 ILCS 5/8-17(a)(9). If the public funds in the Treasurer’s care were not accounted for properly, then the Treasurer has an obligation to act to remedy that accounting.

LT’s argument that the Trustees are not obligated to take action must be taken in the light of its Second Amended Counterclaim, wherein LT asserts a claim for *breach of fiduciary duty* against the Trustees. On the one hand, LT alleges that the Treasurer has a fiduciary duty with respect to the funds in its care; yet on the other hand LT seemingly maintains that the Treasurer has no obligation to do so in accordance with state law. If the Treasurer owes LT a fiduciary duty, it owes one to the other Districts, too. With respect to this second factor, Judge Hall again agreed with the Trustees, explaining “[t]here is an obligation of the governmental unit to act on behalf of the public, it appears....” (*Id.* at 9:6-8.)

With respect to the **third factor**, in *A C & S* the Supreme Court noted that “defendants correctly point out that almost any time a governmental entity is involved there will be some fiscal impact.” 131 Ill. 2d at 476. Because of this, the Court explained the third factor must be given a “realistic application.” *Id.* The Court found that the extent of public revenues being implicated was sufficient to support a public right because “[w]e are not dealing with small sums

of money; rather, the cost of these abatement projects will run into the millions.” *Id.* In total, the amount of improper benefits that flowed to LT as a result of Robert Healy’s wrongdoing is in excess of \$4.7 million. As in *A C & S*, the amounts at issue here also “run into the millions.”

Once again, Judge Hall agreed with the Trustees, explaining that “there is a lot of money involved here. So I think that the Statute of Limitations does not prevent the trustees from pursuing this.” (*Id.* at 9:11-14.) Ultimately, while not so holding as a matter of law, Judge Hall denied LT’s Motion for Partial Summary Judgment, finding that “it would seem to me that there is a public interest exemption....” (Ex. 2 at 7:4-5.)

All three factors discussed above establish that the Trustees are enforcing a “public right” as defined by the Supreme Court. The facts establishing this point are undisputed and there is no reason that this Court should not enter judgment as a matter of law against LT on their Second Affirmative Defense and find that the statute of limitations does not prohibit the Trustees from prosecuting any part of this action.

In prior briefing, LT has depended upon an Appellate Court decision that it mistakenly believes supports its position: *Champaign County Forest Preserve District v. King*, 291 Ill. App. 3d 197 (4th Dist. 1997). This case, however, illustrates why the Trustees are correct – something Judge Hall recognized. In *King*, a single forest preserve district sued its insurance broker alleging it had been overcharged for insurance premiums. *Id.* at 199. The total amount of premium at issue was about \$20,000 per year over a seven-year period. *Id.*

The Appellate Court concluded that a “public right” was not at issue. First, the insurance did not directly affect or benefit the public, but rather only benefited the park district. *Id.* at 200-01. Second, the park district was not obligated to purchase the insurance. *Id.* at 201-02. Third, the total amount of money at issue was not stated, but presumably would have been around

\$140,000. *Id.* at 202. Thus, the court concluded that the “plaintiff’s decision to purchase insurance can only be characterized as a corporate or business undertaking for its own benefit, rather than for the benefit of the general public.” *Id.*

The fact pattern in *King* does not fit this case, as Judge Hall noted in finding that “unlike the so-called insurance premium issue in the other case that was cited which was the *King* case, the *Champaign County Forest Preserve District* versus *King*. This is a different situation. And the *King* facts don’t fit this one.” (*Id.* at 8:24-9:5.)

While the Trustees are a single body politic, unlike the park district in *King*, the Treasurer holds public funds for the Districts. The Treasurer has an obligation to properly account for the public funds in his or her custody. Robert Healy, instead, permitted LT to receive improper financial benefits. This necessarily worked to the detriment of the other school districts. The Plaintiff as a body politic does not personally benefit in any fiscal sense whatsoever from this lawsuit. Moreover, unlike the modest amount at issue in *King*, the amount at issue here exceeds \$4.7 million. This lawsuit cannot be characterized as a “corporate or business undertaking for [the Trustees] own benefit.”

Because the Trustees are enforcing a “public right,” and/or because the Treasurer is holding the public funds in question in trust, this Court should enter judgment as a matter of law on LT’s Second Affirmative Defense. The underlying facts are not in dispute and both parties agree that this matter is ripe for summary disposition.

IV. CONCLUSION

WHEREFORE, for the reasons stated herein, the Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court grant entry of judgment

in its favor and against the Defendant, Lyons Township High School District 204, on the Second Affirmative Defense, along with providing such other relief as may be necessary or appropriate.

Respectfully submitted,

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

By: /s/ Barry P. Kaltenbach
One of its attorneys.

Gerald E. Kubasiak
gekubasiak@quinlanfirm.com
Gretchen M. Kubasiak
gmkubasiak@quinlanfirm.com
The Quinlan Law Firm, LLC
231 S. Wacker Drive, Suite 6142
Chicago, Illinois 60606
(312) 212-8204
Firm No. 43429

Barry P. Kaltenbach
kaltenbach@millercanfield.com
Miller, Canfield, Paddock & Stone, P.L.C.
225 West Washington, Suite 2600
Chicago, Illinois 60606
(312) 460-4200
Firm No. 44233

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019, I electronically filed PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW ON DEFENDANT'S SECOND AFFIRMATIVE DEFENSE: STATUTE OF LIMITATIONS (ALTERNATIVELY, MOTION TO RECONSIDER) 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

EXHIBIT

1

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

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

Plaintiff,)

vs.)

LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)

Defendant.)

No. 13 CH 23386

Hon. Sophia H. Hall
Calendar 14

VERIFIED AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, by its undersigned counsel, KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C., for its Verified Amended Complaint for Declaratory Relief against the defendant, Lyons Township High School District No. 204, states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees"), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange Park, Cook County, Illinois.

2. Defendant, Lyons Township High School District No. 204 ("District 204"), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

3. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

4. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

5. Pursuant to the Illinois School Code, 105 ILCS 5/1 *et seq.* (the "School Code"), and more particularly Section 8-1 thereof, the Township Trustees, who are elected by and responsible to the voters within Lyons Township, have appointed the Lyons Township School Treasurer (the "Treasurer") to serve as the statutorily-appointed treasurer for the school and other educational districts within Lyons Township for which the Township Trustees are responsible.

6. These school and other educational districts for which the Township Trustees are responsible, and for which the Treasurer provides financial services, include District 204 and: Western Springs School District 101; LaGrange School District 102; Lyons School District 103; Cook County School District 104; LaGrange School District 105; Highlands School District 106; Pleasantdale School District 107; Willow Springs School District 108; Indian Springs School District 109; Argo Community High School District 217; LaGrange Area Department of Special Education, which serves students from fifteen area school districts; Intermediate Service Center #2, which serves forty school districts in western Cook County; Lyons Township Elementary School District Employee Benefits Cooperative; and the Lyons Township Elementary School District Employee Benefits Cooperative.

7. The above school districts contain thirty-eight schools servicing almost 20,000 students.

8. The districts within Lyons Township comprise a Class II county school unit within the meaning of the School Code.

9. The duties of the Township Trustees and the Treasurer are set out in Articles 5 and 8 of the School Code, respectively.

10. As alleged more specifically herein, the obligation of the Treasurer is, in pertinent part, to take custody of public funds for the benefit of the districts it serves (with such funds coming from property taxes and other sources), invest those funds for the benefit of these districts, and pay such amounts to those persons and entities as it is lawfully instructed to pay by the districts it serves, whether such payments are for payroll or other purposes.

11. The obligation of the Treasurer to serve the financial needs of these districts, including managing the public funds upon which they depend and paying their bills, enables the districts to fulfill one of the most important public obligations of government: the obligation to educate. It is the public policy of the State of Illinois, as expressed through Article X, Section I of its Constitution, that “[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capabilities.”

12. Pursuant to Section 8-17 of the School Code, the Treasurer is to receive public funds, including property taxes, and hold those funds for the benefit of the school and other educational districts it serves in furtherance of their obligation to provide for the education of students within Lyons Township.

13. Pursuant to Section 8-7 of the School Code, the Treasurer is, “the only lawful custodian of all school funds.”

14. Section 8-6 of the School Code requires that the Treasurer “have custody of the school funds and shall keep in a cash book separate balances.”

15. In accordance with Section 8-6, the Treasurer is required to maintain cash balances, by fund, for each district which it serves and the Treasurer is obligated to reconcile such balances with the respective cash balances shown by each district.

16. Section 8-17 of the School Code also imposes upon the Treasurer the responsibility for all receipts, disbursements, and investments arising out of the operation of all the school districts being served by the Treasurer.

17. With respect to paying such amounts as each district may owe, Section 8-16 of the School Code requires that the Treasurer make payment on behalf of the districts it serves out of the funds allocated to such districts, but “only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board”

18. Sections 10-18 and 10-20.19 of the School Code provide further detail as to the procedure to be followed in submitting the above orders for payment. The form of order is specifically provided for in Section 10-18.

19. Section 10-20.19 also allows a board to choose to substitute a certified copy of the portions of the board minutes, properly signed by the secretary and president, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the Treasurer, and to what budgetary item each payment shall be debited. That certified copy provides “full authority” to the Treasurer to make the payments. A voucher system may also be used so long as it provides the same information.

20. In order to make payments as lawfully instructed by the districts which it serves, the Treasurer utilizes what are called “Agency Accounts” at local banks.

21. When a district has provided lawful instruction to the Treasurer to issue payment, the Treasurer effectuates the payment drawing on the appropriate Agency Account.

22. Agency Accounts are funded by transfer from other accounts in the custody of the Treasurer and maintained and utilized by the Treasurer to hold funds belonging to multiple districts and for which there is not an immediate need. The funds in the Agency Account, both before and after they arrive in the Agency Account, remain in the custody of the Treasurer.

23. The districts do not have signatory power on the Agency Accounts, with the exception of certain revolving and flex-spending accounts not at issue in this litigation. The Treasurer has signatory power on the Agency Accounts.

**DISTRICT 204'S FAILURE TO PAY FOR ITS *PRO RATA* SHARE OF THE
TREASURER'S OPERATIONAL EXPENSES**

24. The Treasurer has its own costs to run its office and provide its financial services to the districts it serves, including the Treasurer's compensation and expenses of the Treasurer's office. The Treasurer pays these operating expenses from its General Fund, which is funded through each district's Agency Account as alleged more fully below.

25. Section 8-4 of the School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office."

26. Pursuant to Section 8-4 of the School Code, each district's *pro rata* share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such . . . district."

27. This statutory formula obligates the districts with the most money to pay the largest proportion of the costs. For example, if a district is allocated twenty-five percent of all public funds handled by the Treasurer, then it is required by the School Code to pay twenty-five percent of the Treasurer's operating expenses.

28. This statutory formula is mandatory and can only be changed by the General Assembly. No district may unilaterally decide it does not wish to pay its *pro rata* share, nor may any private agreements be made between public bodies in violation of the School Code. A district is required to pay the amount calculated and has no statutory authority to deduct any of its own expenses from its *pro rata* share it owes.

29. In accordance with the statutory requirements of the School Code, on an annual basis the Treasurer determines District 204's *pro rata* share of the Treasurer's operation expenses and submits an invoice to District 204 for payment thereupon.

30. As alleged more particularly above, in order for District 204 to pay these invoices, District 204 would lawfully issue an order or voucher to the Treasurer for payment (or submit a certified copy of the school board minutes approving payments). The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund.

31. Prior to fiscal year 2000, District 204 paid the full amount of the invoices submitted for its *pro rata* share.

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices totaling \$538,431 to District 204 for its *pro rata* share. For these fiscal years, however, District 204 paid only \$157,262 for its *pro rata* share.

33. In fiscal years 2003 through 2013, the Treasurer submitted invoices totaling \$2,397,189 to District 204 for its *pro rata* share. District 204, however, failed to pay any portion of the amount it owed, except for one payment of \$149,551.

34. District 204's payment of \$149,551 was for fiscal year 2013 and was made on October 8, 2014, after Township Trustees filed its original Verified Complaint for Declaratory Relief and while Township Trustees were in the process of drafting this Verified Amended

Complaint for Declaratory Relief. District 204's payment was drawn from an Agency Account at the First National Bank of La Grange.

35. In total, for fiscal years 2000 through 2013, the amount of District 204's unpaid *pro rata* share totals \$2,628,807, taking into account the payment just received.

36. District 204's failure to pay its *pro rata* share in full has created a deficit. As custodian for the districts, the Treasurer has not incurred a loss – the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

37. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts the Treasurer serves will not suffer harm.

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

38. Sections 8-7 and 8-8 of the School Code govern the depositing and investing of school funds.

39. Pursuant to Section 8-7, the Treasurer is "permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds, and (ii) join with township and school treasurers, community college districts and educational service regions in investing school funds, community college funds and educational service region funds."

40. Section 8-7 of the School Code further provides, "When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall 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 fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.”

41. Pursuant to the authority of the School Code, the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.

42. The Treasurer allocates interest on a quarterly basis or as more frequently as is appropriate.

43. When the Treasurer allocates interest to a particular district (and when the Treasurer allocates the principal amongst the comingled funds) the Treasurer does so by making a journal entry. The Treasurer, in essence, makes an entry in its records that the district has been allocated a certain amount of interest generated by the comingled funds. The Treasurer does not write a check to the district, or otherwise physically turn custody of the interest over to the district. The interest stays in the custody of the Treasurer.

44. In fiscal years 1995 through 2012, the Treasurer erroneously allocated \$1,574,636.77 in interest on investments to District 204.

45. This over-allocation to District 204 necessarily means that the other districts which the Treasurer serves have been correspondingly under-allocated investment income. The Treasurer has not incurred a loss – the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

46. To the extent District 204 has been over-allocated this interest, it means the other districts have necessarily been under-allocated interest. The Treasurer anticipates that once this interest is able to be properly reallocated among the districts, as examples, LaGrange School District 102 would get allocated approximately \$265,626 in interest and Argo Community High School District 217 would get allocated approximately \$319,077 in interest.

47. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of reallocating interest so that the other districts it serves will not suffer harm.

DISTRICT 204'S NON-PAYMENT OF ITS OWN AUDIT EXPENSES

48. Article 3, Section 7 of the School Code requires that each school district have an audit of its accounts completed at least once a year by a person who is lawfully qualified to practice public accounting in Illinois. Further requirements regarding a school district's obligation to undertake annual audits are included in the Illinois Administrative Code.

49. These audits are ordered by and undertaken for the benefit of each individual district. Each individual district is, therefore, obligated to pay for its own audit expenses. Typically, the auditing firm that each district elects to use submits an invoice to that district and the district arranges for such invoice to be paid in the same way the district would arrange for any other account payable to be paid.

50. Thus, the district would ordinarily issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the Treasurer would sign a check prepared by the district and drawn on that district's Agency Account.

51. Between 1993 and 2012, District 204 engaged Baker Tilly and/or its predecessor-in-interest to provide these audit and other professional services, including, but not limited to, preparation of audited financial statements and independent auditor's reports.

52. District 204's auditors sent their invoices to District 204.

53. Between 1993 and 2012, each district except District 204 paid for its audit through their Agency Account. The Treasurer did not pay for the districts' audits from its General Fund.

54. Between 1993 and 2012, however, the Treasurer improperly advanced money from its General Fund and paid \$511,068.60 for District 204's audit expenses.

55. The Treasurer has requested that District 204 reimburse the costs of District 204's audit expenses from 1993 to 2012, but District 204 has failed and refused to do so.

56. Since 2012, District 204 has paid its own audit expenses.

57. Because the Treasurer's General Fund is funded by the *pro rata* payment of all of the districts the Treasurer serves, the practical effect of District 204's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of District 204's audits.

58. In order to reimburse the Treasurer, District 204 would need only issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the funds would be taken from District 204's Agency Account. The funds at issue remain and have always been within the Treasurer's custody.

59. The Treasurer has not incurred a loss through District 204's failure and refusal to pay for its own audit expenses – the other fourteen districts it serves have incurred a loss to the

detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

60. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts it serves will not suffer harm.

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

61. An actual controversy exists between Township Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

WHEREFORE, Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully prays that this Court enter a declaratory judgment in its favor and against the Defendant, Lyons Township High School District No. 204 and that this Court make the following findings as a matter of law:

A. Under Section 8-4 of the School Code, District 204 is required to pay its *pro rata* share of the Treasurer's compensation and expenses;

B. Between 2000 and 2013, District 204 has failed to pay its *pro rata* share of the Treasurer's compensation and expenses as required by Section 8-4 of the School Code; District 204's unpaid share of its *pro rata* share of the Treasurer's compensation and expenses for fiscal years 2000 through 2013 is \$2,628,807, or such other amount as may be proven at trial;

C. The Township Trustees are authorized to have the Treasurer debit \$2,628,807, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to

District 204, or from funds otherwise allocated to District 204, in payment of District 204's *pro rata* share of the Treasurer's compensation and expenses incurred during fiscal years 2000 through 2013;

D. In the fiscal years 1995 through 2012, District 204 was erroneously allocated \$1,574,636.77, or such other amount as may be proven at trial, of interest on investments to which it was not entitled

E. The Township Trustees are authorized to reallocate the \$1,574,636.77 erroneously allocated to District 204 and properly allocate that sum amongst the districts;

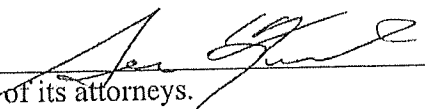
F. District 204 is obligated to pay \$511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that District 204 performed and that was paid by the Treasurer from the Treasurer's General Fund;

G. The Township Trustees are authorized to have the Treasurer debit \$511,068.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to District 204, or from funds otherwise allocated to District 204, in payment of District 204's audit expenses; and

H. Such other findings as may be equitable and appropriate.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

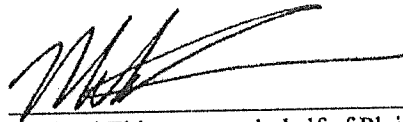
By: 
One of its attorneys.

Gerald E. Kubasiak
gkubasiak@kftrlaw.com
Barry P. Kaltenbach
bkaltenbach@kftrlaw.com
Gretchen M. Kubasiak
gmkubasiak@kftrlaw.com
KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.
20 South Clark Street, 29th Floor
Chicago, Illinois 60603
(312) 630-9600 (Phone)
(312) 630-7939 (Facsimile)
Firm No. 48237
Service by e-mail will be accepted.

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint for Declaratory Relief are true and correct.

Dated: 10-21-14

A handwritten signature in black ink, appearing to be 'Michael Thiessen', written over a horizontal line.

Michael Thiessen, on behalf of Plaintiff

EXHIBIT

2

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

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

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

2014 DEC 18 AM 11:46

Case No. 13 CH 23386

Hon. Sophia H. Hall

NOTICE OF FILING

TO: Gerald E. Kubasiak
Douglas G. Hewitt
Kubasiak Fylstra Thorpe & Rotunno, PC
Two First National Plaza, 29th Floor
20 South Clark Street
Chicago, IL 60603
Fax: 312-630-7939

PLEASE TAKE NOTICE that on **December 18, 2014**, we filed with the Clerk of the Circuit Court of Cook County, Chancery Division, **Defendant's Verified Answer and Affirmative Defenses to Amended Complaint for Declaratory Relief**, a copy of which is served upon you.

Name: Charles A. LeMoine
clemoine@dykema.com
Rosa A. Tumialán
rtumialan@dykema.com
Stephen M. Mahieu
smahieu@dykema.com
Dykema Gossett PLLC

Address: 10 South Wacker Drive
Telephone: (312) 876-1700
Attorney for: Defendant
City: Chicago, Illinois 60606

PROOF OF SERVICE

The undersigned, a non-attorney, states on oath that she served a copy of the foregoing Notice of Filing and Verified Answer and Affirmative Defenses to Amended Complaint for Declaratory Relief to the above counsel of record at the above mailing address by depositing a copy of same in the U.S. mail at 10 South Wacker Drive, Chicago, Illinois 60606, postage prepaid, before 5:00 p.m. on December 18, 2014.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.



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

TOWNSHIP TRUTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST,

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

No. 13 CH 23386

Hon. Sophia H. Hall

**DEFENDANT'S VERIFIED ANSWER AND AFFIRMATIVE DEFENSES
TO AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204"), by and through its undersigned attorneys, states as follows for its answer to the Verified Amended Complaint for Declaratory Relief filed by plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST ("Township Trustees"):

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees"), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange Park, Cook County, Illinois.

ANSWER: Admit only that Township Trustees is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange Park, Cook County, Illinois.

2. Defendant, Lyons Township High School District No. 204 ("District 204"), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

ANSWER: Admit only that District 204 is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange, Cook County, Illinois.

3. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

ANSWER: Admit.

4. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

ANSWER: Admit.

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

5. Pursuant to the Illinois School Code, 105 ILCS 5/1 et seq. (the "School Code"), and more particularly Section 8-1 thereof, the Township Trustees, who are elected by and responsible to the voters within Lyons Township, have appointed the Lyons Township School Treasurer (the "Treasurer") to serve as the statutorily-appointed treasurer for the school and other educational districts within Lyons Township for which the Township Trustees are responsible.

ANSWER: Admit that Township Trustees is comprised of board members who were elected by voters within Lyons Township, and that they are required to operate pursuant to the provisions of the Illinois School Code, including Section 8-1, and other applicable Illinois laws. Admit that Township Trustees appointed various individuals to serve as the Lyons Township School Treasurer (the "Treasurer"), and that the Treasurer is legally required to conduct his/her activities pursuant to the provisions of the Illinois School Code and other applicable Illinois laws. The provisions of the Illinois School Code are the best evidence of the duties, responsibilities, and limitations of the activities of Township Trustees and the Treasurer, and District 204 denies the allegations of Paragraph 5 to the extent they are inconsistent with the provisions of the Illinois School Code. Deny the remaining allegations, if any, of Paragraph 5.

6. These school and other educational districts for which the Township Trustees are responsible, and for which the Treasurer provides financial services, include District 204 and; Western Springs School District 101; LaGrange School District 102; Lyons School District 103; Cook County School District 104; LaGrange School District 105; Highlands School District 106; Pleasantdale School District 107; Willow Springs School District 108; Indian Springs School District 109; Argo Community High School District 217; LaGrange Area Department of Special

Education, which serves students from fifteen area school districts; Intermediate Service Center #2, which serves forty school districts in western Cook County; Lyons Township Elementary School District Employee Benefits Cooperative; and the Lyons Township Elementary School District Employee Benefits Cooperative.

ANSWER: Admit that Township Trustees has purported to provide limited financial services to District 204 and to the other specific school districts listed in Paragraph 6. District 204 lacks knowledge or information sufficient to form a belief as to the truth or falsity of Township Trustees' allegations that it actually "provides financial services" to those other specific school districts. Deny the remaining allegations, if any, of Paragraph 6.

7. The above school districts contain thirty-eight schools servicing almost 20,000 students.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 7.

8. The districts within Lyons Township comprise a Class II county school unit within the meaning of the School Code.

ANSWER: The allegations of Paragraph 8 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the various relevant Class types, and District 204 denies the allegations of Paragraph 8 to the extent they are inconsistent with the provisions of the Illinois School Code.

9. The duties of the Township Trustees and the Treasurer are set out in Articles 5 and 8 of the School Code, respectively.

ANSWER: The allegations of Paragraph 9 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois laws are the best evidence of Township Trustees' and the Treasurer's duties and responsibilities, and District 204 denies the allegations of Paragraph

9 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois laws.

10. As alleged more specifically herein, the obligation of the Treasurer is, in pertinent part, to take custody of public funds for the benefit of the districts it serves (with such funds coming from property taxes and other sources), invest those funds for the benefit of these districts, and pay such amounts to those persons and entities as it is lawfully instructed to pay by the districts it serves, whether such payments are for payroll or other purposes.

ANSWER: The allegations of Paragraph 10 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois laws are the best evidence of the Treasurer's obligations, and District 204 denies the allegations of Paragraph 10 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois laws.

11. The obligation of the Treasurer to serve the financial needs of these districts, including managing the public funds upon which they depend and paying their bills, enables the districts to fulfill one of the most important public obligations of government: the obligation to educate. It is the public policy of the State of Illinois, as expressed through Article X, Section I of its Constitution, that "[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capabilities."

ANSWER: Admit that Paragraph 11 partially quotes from Article X, Section I of the Illinois Constitution of 1970. The remaining allegations of Paragraph 11 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois laws are the best evidence of the Treasurer's obligations, and District 204 denies the allegations of Paragraph 11 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois laws. Answering further, the Illinois Constitution of 1970, Illinois statutes, and Illinois case law are the best evidence of the public policy of the State of Illinois, and District 204 denies the allegations of Paragraph 11 to the extent they are inconsistent with those sources of law.

12. Pursuant to Section 8-17 of the School Code, the Treasurer is to receive public funds, including property taxes, and hold those funds for the benefit of the school and other

educational districts it serves in furtherance of their obligation to provide for the education of students within Lyons Township.

ANSWER: The allegations of Paragraph 12 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 12 to the extent they are inconsistent with the provisions of the Illinois School Code.

13. Pursuant to Section 8-7 of the School Code, the Treasurer is, "the only lawful custodian of all school funds."

ANSWER: Admit that Paragraph 13 partially quotes from Section 8-7 of the Illinois School Code. The remaining allegations of Paragraph 13 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 13 to the extent they are inconsistent with the provisions of the Illinois School Code.

14. Section 8-6 of the School Code requires that the Treasurer "have custody of the school funds and shall keep in a cash book separate balances."

~~ANSWER: Admit that Paragraph 14 partially quotes from Section 8-6 of the Illinois~~
School Code. The remaining allegations of Paragraph 14 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 14 to the extent they are inconsistent with the provisions of the Illinois School Code.

15. In accordance with Section 8-6, the Treasurer is required to maintain cash balances, by fund, for each district which it serves and the Treasurer is obligated to reconcile such balances with the respective cash balances shown by each district.

ANSWER: The allegations of Paragraph 15 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 15 to the extent they are inconsistent with the provisions of the Illinois School Code.

16. Section 8-17 of the School Code also imposes upon the Treasurer the responsibility for all receipts, disbursements, and investments arising out of the operation of all the school districts being served by the Treasurer.

ANSWER: The allegations of Paragraph 16 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 16 to the extent they are inconsistent with the provisions of the Illinois School Code.

17. With respect to paying such amounts as each district may owe, Section 8-16 of the School Code requires that the Treasurer make payment on behalf of the districts it serves out of the funds allocated to such districts, but "only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board"

ANSWER: Admit that Paragraph 17 partially quotes from Section 8-16 of the Illinois School Code. The remaining allegations of Paragraph 17 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 17 to the extent they are inconsistent with the provisions of the Illinois School Code.

18. Sections 10-18 and 10-20.19 of the School Code provide further detail as to the procedure to be followed in submitting the above orders for payment. The form of order is specifically provided for in Section 10-18.

ANSWER: The allegations of Paragraph 18 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 18 to the extent they are inconsistent with the provisions of the Illinois School Code.

19. Section 10-20.19 also allows a board to choose to substitute a certified copy of the portions of the board minutes, properly signed by the secretary and president, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the Treasurer, and to what budgetary item each payment shall be debited. That certified copy provides "full authority" to the Treasurer to make the payments. A voucher system may also be used so long as it provides the same information.

ANSWER: The allegations of Paragraph 19 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 19 to the extent they are inconsistent with the provisions of the Illinois School Code.

20. In order to make payments as lawfully instructed by the districts which it serves, the Treasurer utilizes what are called "Agency Accounts" at local banks.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 20.

21. When a district has provided lawful instruction to the Treasurer to issue payment, the Treasurer effectuates the payment drawing on the appropriate Agency Account.

ANSWER: The allegations of paragraph 21 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 21.

22. Agency Accounts are funded by transfer from other accounts in the custody of the Treasurer and maintained and utilized by the Treasurer to hold funds belonging to multiple districts and for which there is not an immediate need. The funds in the Agency Account, both before and after they arrive in the Agency Account, remain in the custody of the Treasurer.

ANSWER: The allegations of paragraph 22 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 22.

23. The districts do not have signatory power on the Agency Accounts, with the exception of certain revolving and flex-spending accounts not at issue in this litigation. The Treasurer has signatory power on the Agency Accounts.

ANSWER: The allegations of paragraph 23 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 23.

DISTRICT 204'S FAILURE TO PAY FOR ITS PRO RATA SHARE OF THE TREASURER'S
OPERATIONAL EXPENSES

24. The Treasurer has its own costs to run its office and provide its financial services to the districts it serves, including the Treasurer's compensation and expenses of the Treasurer's office. The Treasurer pays these operating expenses from its General Fund, which is funded through each district's Agency Account as alleged more fully below.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 24.

25. Section 8-4 of the School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office."

ANSWER: Admit that Paragraph 25 partially quotes from Section 8-4 of the Illinois School Code. The remaining allegations of Paragraph 25 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of school districts' payment obligations, and

District 204 denies the allegations of Paragraph 25 to the extent they are inconsistent with the provisions of the Illinois School Code.

26. Pursuant to Section 8-4 of the School Code, each district's pro rata share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such . . . district."

ANSWER: Admit that Paragraph 26 partially quotes from Section 8-4 of the Illinois School Code. The remaining allegations of Paragraph 26 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the proper manner in which to determine any pro rata share, and District 204 denies the allegations of Paragraph 26 to the extent they are inconsistent with the provisions of the Illinois School Code.

27. This statutory formula obligates the districts with the most money to pay the largest proportion of the costs. For example, if a district is allocated twenty-five percent of all public funds handled by the Treasurer, then it is required by the School Code to pay twenty-five percent of the Treasurer's operating expenses.

ANSWER: The allegations of Paragraph 27 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the proper manner in which to determine any pro rata share, and District 204 denies the allegations of Paragraph 27 to the extent they are inconsistent with the provisions of the Illinois School Code.

28. This statutory formula is mandatory and can only be changed by the General Assembly. No district may unilaterally decide it does not wish to pay its pro rata share, nor may any private agreements be made between public bodies in violation of the School Code. A district is required to pay the amount calculated and has no statutory authority to deduct any of its own expenses from its pro rata share it owes.

ANSWER: The allegations of Paragraph 28 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 denies the allegations of Paragraph 28.

29. In accordance with the statutory requirements of the School Code, on an annual basis the Treasurer determines District 204's pro rata share of the Treasurer's operation expenses and submits an invoice to District 204 for payment thereupon.

ANSWER: Admit that the Treasurer has submitted certain invoices to District 204 that purportedly related to District 204's pro rata share of the Treasurer's annual operating expenses. Deny the remaining allegations of Paragraph 29.

30. As alleged more particularly above, in order for District 204 to pay these invoices, District 204 would lawfully issue an order or voucher to the Treasurer for payment (or submit a certified copy of the school board minutes approving payments). The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund.

ANSWER: Admit District 204 paid certain invoices submitted by the Treasurer, including by issuing vouchers or checks to the Treasurer for payment. District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegation that "The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund." Deny the remaining allegations of Paragraph 30.

31. Prior to fiscal year 2000, District 204 paid the full amount of the invoices submitted for its pro rata share.

ANSWER: Admit that prior to fiscal year 1999, District 204 paid the Treasurer's invoices in full. Deny that the Treasurer's invoices prior to fiscal year 2000 reflected District 204's proper or lawful pro rata share of expenses. Deny the remaining allegations of Paragraph 31.

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices totaling \$538,431 to District 204 for its pro rata share. For these fiscal years, however, District 204 paid only \$157,262 for its pro rata share.

ANSWER: Admit District 204 received invoices from the Treasurer for fiscal years 2000, 2001, and 2002 totaling \$538,431.00 before agreed chargebacks for services District 204 supplied, which were applied and credited for the respective fiscal years. Admit District 204 mailed payments for the remaining balances to the Treasurer for fiscal years 2000,

2001, and 2002 in the total amount of \$98,188.75, consistent with the prior agreement between District 204 and the Township Trustees. Deny the remaining allegations of Paragraph 32.

33. In fiscal years 2003 through 2013, the Treasurer submitted invoices totaling \$2,397,189 to District 204 for its pro rata share. District 204, however, failed to pay any portion of the amount it owed, except for one payment of \$149,551.

ANSWER: Admit District 204 made a payment in the amount of \$149,551.00 toward fiscal year 2013. Deny the remaining allegations of Paragraph 33.

34. District 204's payment of \$149,551 was for fiscal year 2013 and was made on October 8, 2014, after Township Trustees filed its original Verified Complaint for Declaratory Relief and while Township Trustees were in the process of drafting this Verified Amended Complaint for Declaratory Relief. District 204's payment was drawn from an Agency Account at the First National Bank of La Grange.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the allegation that any payment was "drawn from an Agency Account." Admit the remaining allegations of Paragraph 34.

35. In total, for fiscal years 2000 through 2013, the amount of District 204's unpaid pro rata share totals \$2,628,807, taking into account the payment just received.

ANSWER: Deny.

36. District 204's failure to pay its pro rata share in full has created a deficit. As custodian for the districts, the Treasurer has not incurred a loss — the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

ANSWER: Deny.

37. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts the Treasurer serves will not suffer harm.

ANSWER: Deny.

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

38. Sections 8-7 and 8-8 of the School Code govern the depositing and investing of school funds.

ANSWER: The allegations of Paragraph 38 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois law are the best evidence of the proper manner of depositing and investing school funds, and District 204 denies the allegations of Paragraph 38 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois law.

39. Pursuant to Section 8-7, the Treasurer is "permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds, and (ii) join with township and school treasurers, community college districts and educational service regions in investing school funds, community college funds and educational service region funds."

ANSWER: Admit that Paragraph 39 partially quotes from Section 8-7 of the Illinois School Code. The remaining allegations of Paragraph 39 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 39 to the extent they are inconsistent with the provisions of the Illinois School Code.

40. Section 8-7 of the School Code further provides, "When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall 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 fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired."

ANSWER: Admit that Paragraph 40 partially quotes from Section 8-7 of the Illinois School Code. Deny that Paragraph 40 includes the entire text of Section 8-7 of the Illinois

School Code, and deny the allegations of Paragraph 40 to the extent they are inconsistent with Section 8-7 of the Illinois School Code.

41. Pursuant to the authority of the School Code, the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegation that “the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.” The remaining allegations of Paragraph 41 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer’s duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 41 to the extent they are inconsistent with the provisions of the Illinois School Code.

42. The Treasurer allocates interest on a quarterly basis or as more frequently as is appropriate.

ANSWER: Deny.

43. When the Treasurer allocates interest to a particular district (and when the Treasurer allocates the principal amongst the comingled funds) the Treasurer does so by making a journal entry. The Treasurer, in essence, makes an entry in its records that the district has been allocated a certain amount of interest generated by the comingled funds. The Treasurer does not write a check to the district, or otherwise physically turn custody of the interest over to the district. The interest stays in the custody of the Treasurer.

ANSWER: Deny.

44. In fiscal years 1995 through 2012, the Treasurer erroneously allocated \$1,574,636.77 in interest on investments to District 204.

ANSWER: Deny.

45. This over-allocation to District 204 necessarily means that the other districts which the Treasurer serves have been correspondingly under-allocated investment income. The Treasurer has not incurred a loss — the other fourteen districts it serves have incurred a loss to

the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

ANSWER: Deny. District 204 further moves this Court to strike the inaccurate, self-serving, and politically-motivated allegations of Paragraph 46 regarding the supposed “loss” of allocations of interest to other school districts.

46. To the extent District 204 has been over-allocated this interest, it means the other districts have necessarily been under-allocated interest. The Treasurer anticipates that once this interest is able to be properly reallocated among the districts, as examples, LaGrange School District 102 would get allocated approximately \$265,626 in interest and Argo Community High School District 217 would get allocated approximately \$319,077 in interest.

ANSWER: Deny. District 204 further moves this Court to strike the inaccurate, self-serving, and politically-motivated allegations of Paragraph 46 regarding supposed allocations of interest to other school districts.

47. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of reallocating interest so that the other districts it serves will not suffer harm.

ANSWER: Deny.

DISTRICT 204'S NON-PAYMENT OF ITS OWN AUDIT EXPENSES

48. Article 3, Section 7 of the School Code requires that each school district have an audit of its accounts completed at least once a year by a person who is lawfully qualified to practice public accounting in Illinois. Further requirements regarding a school district's obligation to undertake annual audits are included in the Illinois Administrative Code.

ANSWER: The allegations of Paragraph 48 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of any audit requirement, and District 204 denies the allegations of Paragraph 48 to the extent they are inconsistent with the provisions of the Illinois School Code.

49. These audits are ordered by and undertaken for the benefit of each individual district. Each individual district is, therefore, obligated to pay for its own audit expenses. Typically, the auditing firm that each district elects to use submits an invoice to that district and

the district arranges for such invoice to be paid in the same way the district would arrange for any other account payable to be paid.

ANSWER: Deny.

50. Thus, the district would ordinarily issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the Treasurer would sign a check prepared by the district and drawn on that district's Agency Account.

ANSWER: Deny.

51. Between 1993 and 2012, District 204 engaged Baker Tilly and/or its predecessor-in-interest to provide these audit and other professional services, including, but not limited to, preparation of audited financial statements and independent auditor's reports.

ANSWER: Admit.

52. District 204's auditors sent their invoices to District 204.

ANSWER: Admit.

53. Between 1993 and 2012, each district except District 204 paid for its audit through their Agency Account. The Treasurer did not pay for the districts' audits from its General Fund.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 53.

54. Between 1993 and 2012, however, the Treasurer improperly advanced money from its General Fund and paid \$511,068.60 for District 204's audit expenses.

ANSWER: Admit the Treasurer agreed to pay District 204's audit expenses for the years in question. Deny the remaining allegations of Paragraph 54.

55. The Treasurer has requested that District 204 reimburse the costs of District 204's audit expenses from 1993 to 2012, but District 204 has failed and refused to do so.

ANSWER: Admit that, in 2013, the Treasurer's office requested that District 204 reimburse the Treasurer for certain audit expenses the Treasurer previously paid, by agreement, and that District 204 has no obligation to reimburse the Treasurer's office for said expenses. Deny the remaining allegations of paragraph 55.

56. Since 2012, District 204 has paid its own audit expenses.

ANSWER: Admit.

57. Because the Treasurer's General Fund is funded by the pro rata payment of all of the districts the Treasurer serves, the practical effect of District 204's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of District 204's audits.

ANSWER: Deny.

58. In order to reimburse the Treasurer, District 204 would need only issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the funds would be taken from District 204's Agency Account. The funds at issue remain and have always been within the Treasurer's custody.

ANSWER: Deny.

59. The Treasurer has not incurred a loss through District 204's failure and refusal to pay for its own audit expenses — the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

ANSWER: Deny.

60. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts it serves will not suffer harm.

ANSWER: Deny.

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

61. An actual controversy exists between Township Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

ANSWER: District 204 asserts that it is entitled to a trial by jury on all contested facts at issue in this litigation. Subject to and without waiving that right, District 204 admits the remaining allegations of Paragraph 61.

WHEREFORE, defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Honorable Court: (1) enter judgment in favor of District 204 and against plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) award District 204 its costs; and (3) grant such further relief as the Court deems just and reasonable.

AFFIRMATIVE DEFENSES

Defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204"), states as follows for its affirmative defenses to the Verified Amended Complaint for Declaratory Relief filed by plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST ("Township Trustees"):

FACTS COMMON TO ALL AFFIRMATIVE DEFENSES

1. District 204 is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange, Cook County, Illinois.
2. Township Trustees is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange Park, Cook County, Illinois.
3. Township Trustees provides certain required, financial-related services to a limited number of school districts in Township 38 North, Range 12 East, including District 204.
4. District 204 and Township Trustees entered into an agreement in or around 1999 whereby District 204 agreed to perform certain financial-related services Township Trustees otherwise would have been obligated to perform on District 204's behalf.
5. By virtue of District 204 performing certain financial-related services Township Trustees was otherwise obligated to perform on District 204's behalf, Township Trustees saved millions of dollars in expenses it otherwise would have been obligated to incur in performing said services.

6. Through District 204 and Township Trustees' course of dealing, Township Trustees would first submit an invoice to District 204 setting forth District 204's purported *pro rata* share of Township Trustees' treasurer's expenses. District 204 would then provide Township Trustees with an invoice detailing the services District 204 performed that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

7. During the parties' course of dealing from fiscal years 1999 through 2012, Township Trustees agreed that District 204 could properly offset the expenses it undertook in performing services Township Trustees otherwise would have been obligated to perform on District 204's behalf against any amount it owed to Township Trustees for District 204's purported *pro rata* share of annual expenses.

8. During the fiscal years of 1999 through 2012, the value of the services District 204 performed that Township Trustees otherwise would have been obligated to perform on District 204's behalf exceeded the value of District 204's purported *pro rata* share of annual expenses by over \$285,000.00.

9. During the fiscal years of 1993 to 2012, it was necessary for an auditor to examine District 204's books and records relating to financial services it was performing that Township Trustees otherwise would have been obligated to perform on District 204's behalf. As such, Township Trustees agreed to cover the expense of those audits.

10. Any auditing expense payment Township Trustees made on behalf of District 204 involved the release of funds to a third-party auditing firm. Township Trustees does not hold those funds in trust.

11. In addition, on information and belief, for the fiscal years of 1999 through 2012, Township Trustees included all such auditing expenses in its invoices to District 204 and to other

school district members for their purported *pro rata* shares of the Township Trustees' annual expenses.

12. During the fiscal years of 1995 to present, Township Trustees has been obligated to pay member school districts, including District 204, their share of pooled investment interest income. Notwithstanding that obligation, Township Trustees has substantially underpaid District 204 the interest it is owed on hundreds of millions of dollars in investments.

13. Any interest payments Township Trustees made to member school districts, including District 204, involved the release of those funds by Township Trustees to each member school district for its discretionary use. Such funds did not remain in Township Trustees' custody.

14. Neither District 204, nor any other member district, had any control over Township Trustees' calculation and allocation of annual investment interest.

15. On information and belief, Township Trustees allocated interest payments to member school districts without regard for the amounts actually owed, resulting in overpayments to certain districts and underpayments to other districts.

16. On information and belief, Township Trustees made interest payment allocations to members school districts other than District 204 based on political concerns and not any proper mathematical formula.

17. Township Trustees has, to date, refused to provide District 204 and other member districts with documents and information necessary to examine Township Trustees' financial activities generally and its interest payments to member school districts specifically.

18. Township Trustees were statutorily obligated to oversee the Township Trustees' treasurer's office, including by receiving reports and examining financial books and records.

Notwithstanding that obligation, Township Trustees failed to oversee its treasurer's office, and instead permitted its former treasurer to steal or improperly spend nearly one million dollars in member school districts' funds.

19. The funds Township Trustees collected, or attempted to collect, from member school district, including District 204, to fund the expenses of Township Trustees' treasurer's office were not public funds. Such expenses did not involve any general public interest.

20. On information and belief, Township Trustees have recovered substantial insurance proceeds based on its former treasurer's misconduct. Township Trustees have refused to disclose the amount of those proceeds, and has further failed to distribute the proceeds to member school districts, including District 204.

21. Township Trustees has also frivolously expended, or attempted to expend, significant funds owned by member school districts on unnecessary public relations firm services, duplicative and wasteful financial advisor services, and unnecessary and hugely expensive computer software. On information and belief, Township Trustees' actions in this regard are consistent with its practice of billing member school districts for their "*pro rata* share" of Township Trustees' excessive and improper expenses that were not permitted by law.

FIRST AFFIRMATIVE DEFENSE - LACHES

22. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 22 of its First Affirmative Defense as though fully set forth herein.

23. Township Trustees was aware of, and repeatedly consented to, the foregoing facts for more than a decade.

24. Township Trustees showed a complete lack of diligence by affirmatively deciding not to challenge any payment owed by, made by, or made to District 204 until filing suit in this action in October of 2013.

25. During that same time period, District 204 has passed annual budgets affecting thousands of students, hundreds of staff members, and many thousands of community members.

26. Township Trustees' inexplicable delay in bringing any claim has caused District 204 to suffer severe prejudice.

27. Had Township Trustees raised any challenge or objection to the parties' course of action described above, District 204 would have taken action to adjust its annual budgets and to shift directly to Township Trustees all services Township Trustees otherwise would have been obligated to perform on District 204's behalf, or District 204 would have pursued a separation from Township Trustees at that time.

28. Due to Township Trustees' lack of diligence, the students, staff, and community of District 204 face potentially devastating budget cuts and a corresponding loss of staff, extracurricular activities, and other vital services.

29. Laches may be imputed upon a governmental entity serving one public constituency that is suing another governmental entity serving a different public constituency.

30. Applying laches to Township Trustees' claims is proper and bars Township Trustees from obtaining any relief against District 204.

SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

31. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above, and paragraphs 22 through 30 of its First Affirmative Defense, as this paragraph 31 of its Second Affirmative Defense as though fully set forth herein.

32. All of Township Trustees' claims against District 204 are subject to the five-year catchall statute of limitations set forth in 735 ILCS 5/13-205.

33. Township Trustees failed to bring its claims against District 204 within the applicable limitations period. Applying the statute of limitations is proper and bars Township Trustees from obtaining any relief against District 204.

THIRD AFFIRMATIVE DEFENSE – ACCORD AND SATISFACTION

34. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 34 of its Third Affirmative Defense as though fully set forth herein.

35. Township Trustees and District 204 entered into a valid agreement in or around 1999 that supplanted any prior course of dealing.

36. Township Trustees accepted payments or setoffs from District 204 in accordance with the parties' agreement for more than a decade.

37. Township Trustees is legally barred from enforcing any right that is inconsistent with the parties' agreement.

38. Accord and satisfaction applies and bars Township Trustees from obtaining any relief against District 204.

FOURTH AFFIRMATIVE DEFENSE – RATIFICATION

39. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 39 of its Fourth Affirmative Defense as though fully set forth herein.

40. Township Trustees had complete knowledge of all material facts surrounding the agreement with District 204 described above.

41. Armed with that knowledge, Township Trustees engaged in a course of conduct over a period of more than a decade by which Township Trustees repeatedly demonstrated it had ratified the agreement with District 204. That ratification bars Township Trustees from obtaining any relief against District 204.

FIFTH AFFIRMATIVE DEFENSE – PROMISSORY ESTOPPEL

42. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 42 of its Fifth Affirmative Defense as though fully set forth herein.

43. By entering into the agreement with District 204 described above, Township Trustees made an unequivocal promise by its words and actions to proceed in accordance with the parties' agreement.

44. District 204 materially changed its position to its detriment as a result of Township Trustees' promise, including by modifying its annual budgets to reflect the parties' agreement. Those budgets affected thousands of students, hundreds of staff members, and many thousands of community members.

45. Had Township Trustees raised any challenge or objection to the parties' course of action described above, District 204 would have taken action to adjust its annual budgets and to shift directly to Township Trustees all services Township Trustees otherwise would have been obligated to perform on District 204's behalf, or District 204 would have pursued a separation from Township Trustees at that time.

46. Not requiring Township Trustees to abide by the parties' agreement would result in severe inequity and prejudice to District 204.

47. Promissory estoppel applies to bar Township Trustees from obtaining any relief against District 204.

SIXTH AFFIRMATIVE DEFENSE – EQUITABLE ESTOPPEL

48. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 48 of its Sixth Affirmative Defense as though fully set forth herein.

49. Township Trustees, through its words and actions, represented to District 204 that Township Trustees would abide by the terms of the parties' agreement discussed above.

50. Township Trustees was aware of all material facts surrounding the parties' agreement at the time the parties entered into the agreement.

51. Township Trustees concealed from District 204 the fact that Township Trustees intended to accept the value of District 204's services for more than a decade and later to attempt to bar District 204 from offsetting the value of its services against its purported share of Township Trustees' *pro rata* expenses and the auditing expenses discussed above.

52. Township Trustees also concealed from District 204 the fact that Township Trustees was knowingly making incorrect interest payments to member districts, including District 204.

53. Township Trustees acted intentionally and with the expectation that District 204 would act upon Township Trustees' representations.

54. District 204 acted upon Township Trustees' representations to District 204's detriment, including by modifying its annual budgets to reflect the parties' agreement.

55. Equitable estoppel applies to bar Township Trustees from obtaining any relief against District 204.

SEVENTH AFFIRMATIVE DEFENSE – WAIVER

56. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 56 of its Seventh Affirmative Defense as though fully set forth herein.

57. Township Trustees and District 204 had equal bargaining power.

58. By entering into the agreement with District 204 described above, and through the parties' course of conduct of more than a decade, Township Trustees knowingly and voluntarily relinquished its known rights to recovery against District 204.

59. Waiver applies to bar Township Trustees from obtaining any relief against District 204.

EIGHTH AFFIRMATIVE DEFENSE – UNCLEAN HANDS

60. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 60 of its Eighth Affirmative Defense as though fully set forth herein.

61. Township Trustees pray in part for equitable relief in this action.

62. Township Trustees, through its actions described above, is guilty of misconduct and bad faith toward District 204.

63. Township Trustees' misconduct and bad faith relates to the parties' disputes in this action.

64. Township Trustees' unclean hands bar it from receiving any equitable relief against District 204.

NINTH AFFIRMATIVE DEFENSE – SETOFF

65. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 65 of its Ninth Affirmative Defense as though fully set forth herein.

66. District 204 is entitled to a setoff against any judgment entered in this action in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

67. District 204 is also entitled to a setoff against any judgment entered in this action in the amount of Township Trustees' underpayment of investment interest to District 204. District 204 is also entitled to a judgment against Township Trustees for the value of the services District 204 provided that exceeded its share of *pro rata* expenses.

TENTH AFFIRMATIVE DEFENSE – UNJUST ENRICHMENT

68. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 68 of its Tenth Affirmative Defense as though fully set forth herein.

69. Township Trustees' retention of the services District 204 provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf is not legally justifiable.

70. District 204 reasonably expected to receive compensation for the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

71. Township Trustees had complete knowledge of the benefits District 204 was conferring on Township Trustees in the form of services District 204 provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

72. Township Trustees would be unjustly enriched to District 204's detriment if Township Trustees were permitted accept District 204's services without providing any compensation or offset.

73. Equity and good conscience require Township Trustees to make restitution to District 204 in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

ELEVENTH AFFIRMATIVE DEFENSE – QUANTUM MERUIT

74. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 74 of its Eleventh Affirmative Defense as though fully set forth herein.

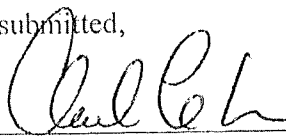
75. In the alternative, should Township Trustees contend the parties did not enter into an express contract or agreement as discussed above, Township Trustees made an implied promise to District 204 that it would compensate District 204 in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

76. Township Trustees is legally obligated to reimburse District 204 in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

WHEREFORE, defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Honorable Court: (1) enter judgment in favor of District 204 and against plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) award District 204 its costs; and (3) grant such further relief as the Court deems just and reasonable, or as otherwise permitted by law.

Respectfully submitted,

By:



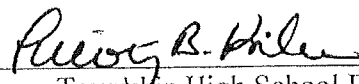
One of the Attorneys for Defendant,
LYONS TOWNSHIP HIGH SCHOOL DISTRICT
204

Charles A. LeMoine
clemoine@dykema.com
Rosa A. Tumialán
rtumialan@dykema.com
Stephen M. Mahieu
smahieu@dykema.com
Dykema Gossett PLLC
10 S. Wacker Drive, Suite 2300
Chicago, IL 60606
Telephone: (312) 876-1700
Facsimile: (312) 876-1155
Firm I.D. No. 42297

DRAFT; SUBJECT TO ATTORNEY-CLIENT AND WORK-PRODUCT PRIVILEGES

VERIFICATION

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



Lyons Township High School District 204

By: Dr. Timothy Kilrea

Its: Superintendent

Dated: 12/18/2014

EXHIBIT

3

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

TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12 EAST,)
Plaintiff and Counter-Defendant,) No. 13 CH 23386
v.) Hon. Sophia H. Hall
LYONS TOWNSHIP HIGH SCHOOL) Calendar 14
DISTRICT 204,)
Defendant and Counter-Plaintiff.)

ORDER

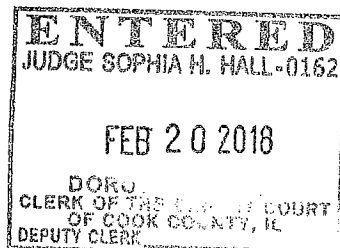
This matter coming to be heard on Defendant Lyons Township High School's ("LT's") Motion for Partial Summary Judgment on the Statute of Limitations Issue, the matter being fully briefed and fully argued by both sides before the Court, IT IS ORDERED:

1. Defendant LT's Motion for Partial Summary Judgment, for the reasons that the Court stated in its oral ruling issued today in open Court, is denied. *without prejudice to proof to be presented at trial.*
2. This case is continued for a status hearing on March 20, 2018, at 9:30 a.m.
3. The ruling date set for March 16, 2018, at 11:00 a.m. is stricken.

By:

Prepared By:

Jay R. Hoffman (Atty. No. 34710)
Hoffman Legal
20 North Clark St., Ste. 2500
Chicago, IL 60602
(312) 899-0899
jay@hoffmanlegal.com



EXHIBIT

4

STATE OF ILLINOIS)

) SS:

COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS)

TOWNSHIP NORTH, RANGE 12 EAST,)

Plaintiff/Counter-Defendant,)

vs.)

No. 13 CH 23386

LYONS TOWNSHIP HIGH SCHOOL)

DIST. 204,)

Defendant/Counter-Plaintiff.)

REPORT OF PROCEEDINGS at the motion of
the above-entitled cause before the Honorable
SOPHIA H. HALL, Judge of said Court, at the
Richard J. Daley Center, Room 2301, on the 20th
day of February, 2018, at the hour of 11:00 a.m.

Reported By: Gina M. Callahan, CSR

License No.: 084-003623



1 APPEARANCES:

2 MILLER, CANFIELD, PADDOCK AND STONE, P.C.

3 BY: MR. BARRY P. KALTENBACH and

4 MR. GERALD E. KUBASIAK

5 Chicago, Illinois 60606

6 (312) 460-4231

7 kaltenbach@millercanfield.com

8 kubasiak@millercanfield.com

9 On behalf of the Township Trustees;

10
11 LAW OFFICES OF JAY R. HOFFMAN, by

12 MR. JAY R. HOFFMAN

13 20 North Clark Street, Suite 2500

14 Chicago, Illinois 60602

15 (312) 899-0899

16 jay@hoffmanlegal.com

17 On behalf of LTSD.

1 THE COURT: Okay TTO versus Lyons.

2 MR. HOFFMAN: Here, Judge. Jay Hoffman
3 for the defendant LTSD.

4 MR. KALTENBACH: Good morning. Barry
5 kaltenbach for plaintiff TTO and Gerald Kubasiak
6 is also with me.

7 THE COURT: Oh. He gave your name?

8 MR. KUBASIKA: Yes.

9 THE COURT: All right. The reason I
10 called you in earlier is that I don't have a
11 written opinion for you, but I do need to tell
12 you what's going on with it, just so you have
13 some idea where I think this is with respect to
14 the Statute of Limitations.

15 I'm going to deny the motion for
16 Statute of Limitations without prejudice because
17 I think there is some factual matters that may
18 have a bearing on whether or not a Statute of
19 Limitations will apply. And it may be that I
20 just don't have that information and it is
21 available somewhere else or not.

22 So this was a motion for partial
23 summary judgment of the Statute of Limitations
24 issue. Usually that comes up in a Motion to



1 Dismiss, but I understand why it didn't happen.

2 So again repeating, the Court denies
3 the motion without prejudice.

4 So the factual issues arise around how
5 the tax collections are handled. You kind of
6 leapt into the middle of this, so there is a lot
7 about just how the money is handled piece by
8 piece by piece.

9 So the township, I gather, collects the
10 taxes. I gather that. Not a great deal of
11 conversation. I did look at the statute and
12 maybe I missed it, but the township collects the
13 taxes. And then the township trustees, the
14 school trustees, they have a treasurer who is
15 designated to do all the money handling. And
16 pursuant to statute, there are various
17 provisions about how the money that's collected
18 is to be managed and how the items are
19 distributed, more in a conclusory fashion
20 they're supposed to do this. So here's where
21 the questions come up.

22 So dealing with the investment income,
23 the investment income apparently is -- and I'm
24 going to use this as an analogy because it



1 helped me. If the analogy doesn't fit what is
2 happening actually, then let me know. But I
3 think of the treasurer, and I'm going to talk
4 about the trustees as like a bank. They are --
5 and they have custody like a bank has of monies
6 in their depositor's accounts.

7 So using that as the analogy, the bank,
8 as custodian of the money, has no trusteeship
9 duties as custodian and the depositors like --
10 this is my understanding of it. And the
11 depositors, like each of the districts, have
12 their own bank account.

13 So any money which is to be distributed
14 from the district's bank account is distributed
15 pursuant to the order of the accountholder, the
16 district's. And the fact that the treasurer --
17 let's just use the treasurer for the trustees is
18 a second signer on the account, it is just that
19 because, I guess, there is a real bank that has
20 the monies on deposit. Okay. So -- but the
21 relationship between the treasurer and the
22 districts is over accounts that are depositing
23 into with the collections.

24 So then I'm asking myself how is the



1 money moved around? So apparently, the statute
2 allows for the treasurer to take the agency
3 accounts and put them into one big account to
4 invest the monies, and then the treasurer will,
5 as the income comes in on the combined
6 investment account which contains the district's
7 money that has already been distributed to the
8 districts, then those monies are distributed. I
9 don't know if there is any trusting around that.
10 It doesn't -- and if it is a trust account, then
11 it would have to be very specific that there is
12 a trust.

13 Let me cut to the chase in a moment. I
14 don't see anything that indicates that the
15 treasurer is holding -- at this point holding
16 any money in trust subject to the treasurer's
17 discretion as to how they might spend things.
18 It just seems to me the treasurer is moving the
19 district's monies according to the statutory
20 requirements. So I'm not seeing that.

21 So that means the issue of the Statute
22 of Limitations, in my view, at this point is not
23 going to be resolved by saying the Statute of
24 Limitations doesn't apply because there is some



1 trust account happening.

2 All right. So now we get to what
3 remains is whether there is a public interest
4 exemption. Yes. And it would seem to me that
5 there is a public interest exemption because,
6 from what I can tell from how the monies are
7 moving, because the district's -- and this case
8 is kind of backwards in a way. But the monies
9 in the district accounts or however they're
10 being moved, the people have an interest in
11 them. So it would seem that whatever is going
12 to happen here, there is a public interest
13 exemption. So it would seem that that doesn't
14 apply based upon what I can see. The investment
15 income is of interest, and that's a different
16 kind of account. I don't know. More
17 information has to be had about that.

18 Then the operating expenses. How are
19 the operating expenses paid? It would seem that
20 the distribution of the operating expenses are
21 connected to the whether or not the audit
22 payments to -- let me back up.

23 Moving to the audit expenses, the audit
24 expenses seem -- of Lyons Township seem to come



1 out of the operating income. And so if the
2 audit expenses were properly paid or not paid,
3 it would affect the percentages that were being
4 distributed from the operating income. Though
5 these two pots of money are treated separately,
6 they are connected, because I think that the
7 only question here is because the audit expenses
8 for Lyons Township is being paid out of -- is
9 being paid as a part of the operating expenses
10 of the treasurer's office, as such, then that
11 affects the portion that everybody is paying to
12 reimburse for the operating expenses.

13 I know this sounds a little confusing
14 as I'm expressing this, but that's because it is
15 not totally clear how the monies are traveling.
16 And in any event, with respect to the elements
17 of the public interest exception as is set up,
18 those elements seem to be based on -- and they
19 look like they are separate ones -- the effect
20 of the interest on the public, the handling of
21 that money does have an interest in the public
22 in terms of the monies available to address the
23 operation of the schools. Clearly, a connection
24 there, unlike the so-called insurance premium



1 issue in the other case that was cited which was
2 the King case, the Champaign County Forest
3 Preserve District Versus King. This is a
4 different situation. And the King facts don't
5 fit this one.

6 There is an obligation of the
7 governmental unit to act on behalf of the
8 public, it appears, and the extent to which the
9 expenditure -- my understanding of that language
10 is how much money is involved here. And that
11 extent of expenditure is there is a lot of money
12 involved here. So I think that the Statute of
13 Limitations does not prevent the trustees from
14 pursuing this.

15 Now, there are a lot of other questions
16 in the cause of action that I think we still end
17 up having to get to, but this was intended to
18 narrow what's at stake. And based upon what's
19 been presented here, I do not see a basis for it
20 narrowing it.

21 MR. KUBASIAK: Thank you, your Honor.
22 You probably don't have too many cases that go
23 back to the 1800s that we have to reply upon.

24 THE COURT: And it was fascinating



1 looking at. And I looked at the -- spent a lot
2 of time looking at the District 5, District 1
3 case.

4 MR. KUBASIAK: Yes, yes.

5 THE COURT: And District 5 District 1 is
6 really kind of different. It doesn't help in a
7 sense, because it was a fight between District 5
8 who already -- where the money had already
9 been -- it was district --

10 MR. KALTENBACH: It was District 5's
11 money but given to District 1.

12 THE COURT: It was District 5's money
13 given to District 1. And I bet that even the
14 judges who were deciding that one were having
15 difficulty because the language was not totally
16 clear, even in the way they wrote it.

17 MR. KALTENBACH: It is archaic.

18 THE COURT: Inartfully written is the
19 word for it.

20 MR. HOFFMAN: So before the order, your
21 Honor.

22 THE COURT: I'm going to deny it.

23 MR. HOFFMAN: Without prejudice.

24 THE COURT: Summary judgment for



1 application of the Statute of Limitations
2 without prejudice.

3 MR. HOFFMAN: Without prejudice based
4 upon -- well --

5 MR. KALTENBACH: The reasoning of the
6 Court.

7 MR. HOFFMAN: Subject to proof being
8 presented at trial.

9 MR. KALTENBACH: Well, without
10 prejudice.

11 MR. HOFFMAN: Without prejudice.

12 THE COURT: So that takes care of that.

13 (Whereupon, these were all the
14 proceedings had at this time.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4

5 Gina Callahan, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so
11 taken as aforesaid, and contains the proceedings
12 given at said hearing.

13 *Gina Callahan*
14

15 Gina Callahan, CSR

16 LIC. NO. 084-003623
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EXHIBIT

5

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

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

EXHIBIT

B1

LYONS TOWNSHIP HIGH SCHOOL

P

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DISTRICT 204

Summary of 2/19/2016 PayrollTotal check numbers 7852-7964

Additional Reports

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

PAID
 FEB 17 2016
 BY: *[Signature]*

Void Checks _____

The undersigned hereby certifies the payroll listing in the net amount of
\$ 1,260,186.29 and authorizes payment of the same by the School Treasurer
 of Township 38, range 12.

Adjusted Gross	\$	1,956,655.77	42476013039
Direct Deposit	\$	1,143,263.34	FEB 17 2016 <i>lc</i>
Checks	\$	116,924.95	

Kathryn F. Moran
 Kathryn Moran

Purchasing and Acct. Mgr.

2/12/16
 Date

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TREASURER REPORTS

PAYROLL RUN DATE 2/19/16

Payroll Expenses for Employer by Fund

10 - EXP TOTAL \$ 2061,875.2920 - EXP TOTAL \$ 173,741.3650 - EXP TOTAL \$ 103,985.49FINAL TOTAL \$ 2339,602.14

PAYROLL DEDUCTION TOTALS

10 - LIAB

Fund 10 Total \$ 696,467.48

Liabilities

PAYROLL LIABILITIES TOTALS

10 - LIAB

Fund 10 Total \$ 382,946.37

Liabilities

2013CH23386
LXGNS TRP ESD 204, IL
PAGE: 1
Check Summary (Net Amounts Only) for Payroll Run Number: Regul / Regular Payroll
05-15-10.00.00-010006
CHECK DATE 02/19/2016 - Check Number Sequence

CHECK NUMBER
NOV PAY
NAME
NET PAY

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000007862
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Check Summary (Net Amounts Only) for Payroll Run Number: Regul / Regular Payroll

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CHECK DATE 02/19/2016 - Check Number Sequence

CHECK NUMBER NAME KEY NAME NET PAY

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LYONS TRF HSD 204, IL

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CHECK DATE 02/19/2016 - Check Number Sequence

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CHECK NUMBER NAME NET NET PAY

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PAGE 1 of 6
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EXHIBIT

B2

V15

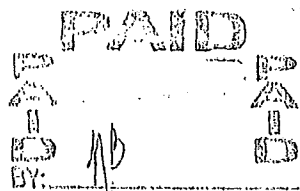
CHECKS

413686-413760 R

DISTRICT #204
SUMMARY OF BILLS

DATE: 2/25/2016

LIABILITY
OTHER REVENUE



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

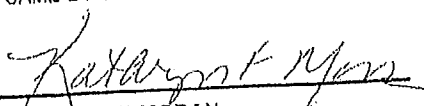
FUND #40 - TRANSPORTATION FUND
WEEKLY BILLS AS HEREIN LISTED

\$ 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

25-Feb-16
Date

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LYONS TWP HSD 204, IL
Check Summary

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05.15.10.00.00-010020

Check Nbr Vendor Name

Check Date

Check Amount

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Check Amount

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PAGE: 3

LYONS TWP ASD 204. IL
Check Summary

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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

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3apckp07.p
05.15.10.00.00-010020

LYONS TRP HSD 20%. IL
Check Summary

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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
0	Voided	Checks For a Total of	0.00
Less	Net Amount		302,909.73

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