

Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
11/21/2018 12:05 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08263

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

<b>LYONS TOWNSHIP TRUSTEES OF</b>	)	
<b>SCHOOLS, TOWNSHIP 38 NORTH,</b>	)	
<b>RANGE 12 EAST,</b>	)	
	)	<b>No. 18 CH 8263</b>
<b>Plaintiff,</b>	)	
	)	<b>Calendar 07</b>
<b>vs.</b>	)	<b>Judge Diane J. Larsen</b>
	)	
<b>LYONS TOWNSHIP HIGH SCHOOL</b>	)	
<b>DISTRICT 204,</b>	)	
	)	
<b>Defendant.</b>	)	

**PLAINTIFF’S MOTION TO STRIKE DEFENDANT’S AFFIRMATIVE DEFENSE**

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, by its undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., moves to strike the Affirmative Defense filed by the Defendant, Lyons Township High School District 204, pursuant to 735 ILCS 5/2-615, and in support of this Motion states as follows:

**I. INTRODUCTION**

Plaintiff’s one-count Complaint seeks a declaratory judgment regarding Defendant’s refusal to pay four annual invoices that Plaintiff sent to the Defendant, and for which the Defendant is responsible for paying, in accordance with the Illinois School Code. Defendant objects to paying the invoices because one of the charges on each invoice is for attorneys’ fees that the Plaintiff incurred in another lawsuit and Defendant does not think that lawsuit should have been filed. Accordingly, the Defendant has pleaded a single Affirmative Defense, asserting that the “American Rule” respecting attorneys’ fees means it has no liability for the charges in question. The “American Rule” has no applicability to the issues raised by the Complaint, however, and is thereby legally deficient; it also is not a proper affirmative defense because it

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does not concede the legal sufficiency of the Plaintiff's Complaint and introduce new, affirmative matter to overcome the Complaint. For these reasons, this Court should strike the Affirmative Defense pursuant to Section 2-615 of the Code of Civil Procedure.

## II. FACTUAL BACKGROUND

### A. The Allegations of Plaintiff's Complaint.

Plaintiff filed its Complaint on June 29, 2018. (See Complaint, Exhibit 1.) On October 10, 2018, Defendant filed its Answer, Affirmative Defense and Counterclaim, asserting a single Affirmative Defense. (See Answer, Exhibit 2.) Plaintiff is a body politic consisting of three elected trustees (the "Trustees"). (See Compl., Ex. 1, ¶2; see also 105 ILCS 5/5-2 ("The trustees shall be a body politic and corporate....")) One of the duties of the Trustees is to appoint the Lyons Township School Treasurer (the "Treasurer") to serve as the treasurer for the school districts and related educational bodies within Lyons Township. (See Compl., Ex. 1, ¶7; see also 105 ILCS 5/8-1 ("the trustees of schools shall appoint a treasurer....")) The Treasurer services eleven school districts consisting of thirty-eight schools and two further educational bodies. (See Compl., Ex. 1, ¶¶8-9.) The Defendant is one of the eleven school districts for whom the Treasurer provides services. (See Compl., Ex. 1, ¶8.)

Under the School Code, the Treasurer is compensated for his or her services and the Treasurer also has expenses of office. (See Compl., Ex. 1, ¶10; see also 105 ILCS 5/8-4.) The Plaintiff, however, does not have a tax base to pay for these costs. (See Compl., Ex. 1, ¶15.) Accordingly, the School Code requires that each district the Treasurer services "shall pay a proportionate share of the compensation of the township treasurer serving such district...and a proportionate share of the expenses of the treasurer's office." (See Compl., Ex. 1, ¶10; see also 105 ILCS 5/8-4.) The School Code also provides the formula for determining the proportionate

shares of each district. (See Compl., Ex. 1, ¶11; see also 105 ILCS 5/8-4.) In accordance with the School Code, after each fiscal year concludes, the Treasurer calculates each district's proportionate share and sends an invoice to each district. (See Compl., Ex. 1, ¶14.)

For fiscal years 2014 through 2017, the Treasurer sent its annual invoice to each school district it services, including the Defendant. (See Compl., Ex. 1, ¶¶17-21.) The Defendant paid some, but not all, of the four invoices at issue. (See Compl., Ex. 1, ¶¶17-21.) The total amount owed but remaining unpaid, as of the time the Complaint was filed, was \$636,740.08. (See Compl., Ex. 1, ¶21.)

The Treasurer is holding, as statutory custodian, approximately \$50,000,000 in funds that belong to the Defendant. (See Compl., Ex. 1, ¶23; see also 105 ILCS 5/8-7.) Because the Defendant refuses to pay its invoices in full, the Plaintiff filed this action seeking a declaratory judgment that it may debit the Defendant's funds in its custody to satisfy the invoices in full. (See Compl., Ex. 1, ¶23.) Nowhere in its Complaint does Plaintiff assert a right to recover its attorneys' fees incurred in this action in the event it prevails.

**B. Defendant's Affirmative Defense.**

Defendant asserts a single affirmative defense, entitled "American Rule Barring Recovery of Attorneys' Fees." As Defendant alleges, there is another action pending the parties; what the Defendant refers to as the "First TTO-LT Case." (Answer, Ex. 2, Affirm Def. ¶2.) A copy of the Plaintiff's Complaint in *that* case is attached hereto as Exhibit 3.<sup>1</sup> In *that* Complaint, the Plaintiff alleged that its former Treasurer engaged in financial malfeasance which resulted in, among other harms, the Defendant receiving improper financial benefits, to the corresponding

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<sup>1</sup> The existence of *that* Complaint is properly the subject of judicial notice as it is a publicly filed court document and, accordingly, this Court may consider it for purposes of a Section 2-615 motion to strike. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶25.

detriment of the other school districts the Treasurer services. (See generally Exhibit 3.) To prosecute *that* case, the Plaintiff hired the same law firm it hired in *this* case. As Defendant alleges, the legal fees incurred in prosecuting the “First TTO-LT Case” have been included in the Treasurer’s annual invoices. (Answer, Ex. 2, Affirm. Def. ¶4.) This means that all of the school districts have been invoiced for their proportionate share of those legal fees, including the Defendant, and it is this charge on the invoices to which the Defendant has objected to paying. (The invoices also include each district’s “proportionate share of the compensation of the township treasurer servicing such districts...and a proportionate share of the [other] expenses of the treasurer’s office,” *e.g.*, the compensation for staff members, in accordance with 105 ILCS 5/8-4.)

The Defendant’s theory underpinning the Affirmative Defense is that the “American Rule” means that the Defendant cannot be required to pay its proportionate share of the Plaintiff’s attorneys fees incurred in the “First TTO-LT Case.” (Answer, Ex. 2, Affirm. Def. ¶7.) The fallacy of this position, and the legal deficiency of the Affirmative Defense, is immediately apparent – the Plaintiff is not seeking to recover prevailing party attorneys’ fees in this litigation. Rather, Plaintiff has simply billed the attorneys’ fees it incurred in the “First TTO-LT Case” as an expense of office and, in *this* lawsuit, is attempting to recover the expenses of office it billed. Defendant might wish to challenge whether the attorneys’ fees are a proper expense of office,<sup>2</sup> but the “American Rule” has nothing whatsoever to do with this lawsuit.

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<sup>2</sup> Whether the legal fees are a proper expense of office is not an issue raised by this Motion, although that the Plaintiff is vested with discretion to retain attorneys in an effort to pursue relief for violations of Illinois law seems beyond reasonable argument. *See, e.g., Lynn v. Trustees of Schools*, 271 Ill. App. 539, 547 (4th Dist. 1933) (holding that Trustees were afforded discretion in such matters and refusing to prohibit the Trustees from hiring attorneys to pursue monies owed to certain school districts within their township).

### III. LEGAL ARGUMENT

#### A. Standard of a Motion to Strike an Affirmative Defense.

A motion to strike an affirmative defense under Section 2-615 of the Code of Civil Procedure challenges the legal sufficiency of the affirmative defense. *Hartmann Realtors v. Bifar*, 2014 IL App (5th) 130543, ¶20. This Court is directed to assume the facts alleged in the Affirmative Defense are true and construe those facts in favor of the Defendant. *Reynolds*, 2013 IL App (4th), ¶25. As noted above, this Court may also matters subject to judicial notice. *Id.* The gist of a motion to strike is to say, “So what?” In other words, even assuming everything the Defendant alleges in its Affirmative Defense is true, is it a legally sufficient affirmative defense? *Id.* Here, there are two ways in which the Affirmative Defense is *not* sufficient.

#### B. The “American Rule” Has Nothing to do With Plaintiff’s Action.

The “American Rule” has nothing to do with Plaintiff’s action. The “American Rule” prohibits “prevailing parties from recovering their attorney fees from the losing party....” *Sandholm v. Kuecker*, 2012 IL 111443, ¶64. Plaintiff is not seeking to recover the attorneys’ fees it is incurring in bringing this action. Moreover, Plaintiff is not seeking “prevailing party” attorneys’ fees whatsoever. Plaintiff’s position is that the legal fees incurred in the “First TTO-LT Case” are an expense of the Treasurer’s office and, under the School Code, the Defendant is responsible for its proportionate share of the Treasurer’s expenses of office, which includes the attorneys’ fees at issue.

The Plaintiff is seeking to recover these fees because they are an expense of office – not because Plaintiff has won a lawsuit against the Defendant. Indeed, it does not matter whether the Plaintiff wins or loses the “First TTO-LT Case;” the Defendant owes its proportionate share of the expenses of office, including the attorneys’ fees, because the School Code imposes that

obligation upon the Defendant. Plaintiff's response to the "American Rule" is the quintessential "So what?" Defendant may wish to challenge what is, or is not, a proper expense of office, but the American Rule just has nothing to do with this case.

**C. The Affirmative Defense is Not a Proper Affirmative Defense.**

An affirmative defense necessarily admits the legal sufficiency of a plaintiff's claim, but then introduces affirmative, new facts to overcome that claim. *Farmers Auto Ins. Ass'n v. Neumann*, 2015 IL App (3d) 140026, ¶16. In this action, the Plaintiff is alleging that the Defendant has not paid the invoices representing the Defendant's proportionate share of the Treasurer's expenses of office. The Defendant is not admitting the legal sufficiency of this claim, and then introducing an affirmative defense to overcome the legal sufficiency of the claim. Defendant is not asserting, for example, that a period of limitations applies, or that the Plaintiff does not have the legal capacity to bring this action. Defendant is just attempting to re-characterize the nature of Plaintiff's action and then alleging why it does not believe the Plaintiff should prevail. This is not a true affirmative defense, but is more akin to a tort or contract defendant simply denying liability. For this additional reason, it is legally deficient and should be stricken.

**IV. CONCLUSION**

For these reasons, the Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, requests that this Court grant this Motion and strike the Affirmative Defense filed by the Defendant, Lyons Township High School District 204, pursuant to 735 ILCS 5/2-615, along with providing such other relief as may be appropriate.

Respectfully submitted,

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

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

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# EXHIBIT 1



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

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

Plaintiff, )

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT 204, )

Defendant. )

No.

2018CH08263  
CALENDAR/ROOM 07  
TIME 00:00  
Declaratory Judgment

COMPLAINT

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, by its undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for its Complaint for Declaratory Relief against the defendant, Lyons Township High School District 204, states as follows:

Nature of the Case

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share – except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant's refusal.

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**Parties, Jurisdiction and Venue**

2. Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“Trustees”), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

3. Defendant, Lyons Township High School District 204 (“District 204”), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

4. 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.

5. 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 Trustees and the Treasurer**

6. Pursuant to the School Code, Plaintiff is comprised of three Trustees who are elected by and responsible to the voters within Lyons Township. 105 ILCS 5/5-2.

7. One of the duties of the Trustees is to appoint the Lyons Township School Treasurer (“Treasurer”) to serve as the treasurer for the school districts and related educational bodies within Lyons Township. 105 ILCS 5/8-1.

8. Within Lyons Township, there are eleven school districts consisting of thirty-eight schools and educating approximately 20,000 students for whom the Trustees are responsible, and for whom the Treasurer provides financial services. The school districts include District 204 and also: 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, and Argo Community High School District 217.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

#### **How the Treasurer's Office is Funded**

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, *e.g.*, leased offices, staff salaries, and office supplies. 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." 105 ILCS 5/8-4 (emphasis added).

11. Each district's proportionate 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." 105 ILCS 5/8-4.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer's costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer's costs.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

14. In accordance with the School Code, on an annual basis the Treasurer calculates each district's proportionate share of the Treasurer's compensation and expense, and sends an invoice to each district.

15. If a district does not pay its proportionate share, in full or in part, this creates a deficit. The Plaintiff does not have a tax base or any source of revenue other than the payments received from the school districts. The Plaintiff cannot "make up" this deficit from its own funds. Ultimately, if left uncorrected, this will force each of the other school districts within Lyons Township to absorb the costs that such district refuses to pay.

**District 204's Failure to Pay its Proportionate Share for Fiscal Years 2014-2017**

16. The Treasurer uses a fiscal year commencing on July 1 and running through June 30 of the following year.

17. For fiscal year 2014, the Treasurer sent its annual invoice to all school districts in April 2015. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$252,053.43. District 204 paid only \$242,321.00, leaving an unpaid balance that year of \$9,732.43.

18. For fiscal year 2015, the Treasurer sent its annual invoice to all school districts in May 2016. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$395,094.69. District 204 paid only \$236,482, leaving an unpaid balance that year of \$158,612.69.

19. For fiscal year 2016, the Treasurer sent its annual invoice to all school districts in May 2017. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$322,352.21. District 204 paid only \$208,061, leaving an unpaid balance that year of \$114,291.21.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent. District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

**The Trustees Seek a Declaratory Judgment to Permit Payment**

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

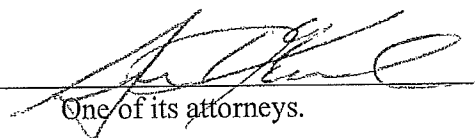
24. An actual controversy exists between the Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties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

WHEREFORE, Plaintiff, Lyons 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 204, on this Complaint and that this Court award Plaintiff its costs and make the following findings as a matter of law:

- A. Between fiscal years 2014 and 2017, inclusive, District 204 has failed to pay its proportionate share of the Treasurer’s compensation and expenses of office, as required by Section 8-4 of the School Code, totaling \$636,740.08, or such other amount as may be proven;
- B. The Treasurer is authorized to debit from the funds it currently holds as custodian for District 204 the amount determined to be owed by District 204; and
- C. Such other findings as may be equitable and appropriate.

Respectfully submitted,

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

By:   
One of its attorneys.

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# EXHIBIT 2

Return Date: No return date scheduled  
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Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
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DOROTHY BROWN  
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COOK COUNTY, IL  
2018CH08263

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

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff,	)	No. 2018 CH 08263
	)	
v.	)	Hon. Diane J. Larsen
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Calendar 7
DISTRICT 204,	)	
	)	
Defendant.	)	Jury Trial Demanded

**LT’S ANSWER, AFFIRMATIVE DEFENSE, AND COUNTERCLAIM**

Defendant and Counter-Plaintiff Lyons Township High School District 204 (“LT”), by its attorney, responds to the Complaint of Plaintiff Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“the TTO”) as follows:

**Answer**

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share — except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant’s refusal.

**RESPONSE:** LT denies the allegations of this paragraph.

2. Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("Trustees"), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

**RESPONSE:** LT admits the allegations of this paragraph.

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3. Defendant, Lyons Township High School District 204 ("District 204"), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

**RESPONSE:** LT admits the allegations of this paragraph.

4. 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.

**RESPONSE:** LT admits the allegations of this paragraph.

5. 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.

**RESPONSE:** LT admits the allegations of this paragraph.

6. Pursuant to the School Code, Plaintiff is comprised of three Trustees who are elected by and responsible to the voters within Lyons Township. 105 ILCS 5/5-2.

**RESPONSE:** LT admits that 105 ILCS 5/5-2 provides that the "school business of all school townships having school trustees shall be transacted by three trustees, to be elected by the qualified voters of the township, as hereinafter provided." LT otherwise denies the allegations of this paragraph.

7. One of the duties of the Trustees is to appoint the Lyons Township School Treasurer ("Treasurer") to serve as the treasurer for the school districts and related educational bodies within Lyons Township. 105 ILCS 5/8-1.

**RESPONSE:** LT admits that 105 ILCS 5/8-1 provides that "the trustees of schools shall appoint a treasurer who shall be ex-officio clerk of the board." LT otherwise denies the allegations of this paragraph.

8. Within Lyons Township, there are eleven school districts consisting of thirty-eight schools and educating approximately 20,000 students for whom the Trustees are responsible, and for whom the Treasurer provides financial services. The school districts include District 204 and also: 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, and Argo Community High School District 217.

**RESPONSE:** LT admits that within Lyons Township, there are the 11 school districts listed in the paragraph. LT also admits that these 11 school districts contain 38 schools and about 20,000 students. LT also admits that the Treasurer provides financial services for some but not all of these districts. LT otherwise denies the allegations of this paragraph.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

**RESPONSE:** LT admits the allegations of this paragraph.

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, e.g., leased offices, staff salaries, and office supplies. 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." 105 ILCS 5/8-4 (emphasis added).

**RESPONSE:** LT admits that the TTO correctly quoted from a portion of 105 ILCS 5/8-4. LT otherwise denies the allegations of this paragraph.

11. Each district's proportionate 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." 105 ILCS 5/8-4.

**RESPONSE:** LT admits the allegations of this paragraph.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer's costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer's costs.

**RESPONSE:** LT admits on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. LT denies that the School Code requires LT to pay a share of "the Treasurer's costs." LT otherwise denies the allegations of this paragraph.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

**RESPONSE:** LT admits the School Code, in 105 ILCS 5/8-4, provides that LT “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 township treasurer’s office.” LT otherwise denies the allegations of this paragraph.

14. In accordance with the School Code, on an annual basis the Treasurer calculates each district's proportionate share of the Treasurer's compensation and expense, and sends an invoice to each district.

**RESPONSE:** LT admits that during the years relevant to this case, the Treasurer sent invoices to the districts for certain salaries and expenses. LT otherwise denies the allegations of this paragraph.

15. If a district does not pay its proportionate share, in full or in part, this creates a deficit. The Plaintiff does not have a tax base or any source of revenue other than the payments received from the school districts. The Plaintiff cannot "make up" this deficit from its own funds. Ultimately, if left uncorrected, this will force each of the other school districts within Lyons Township to absorb the costs that such district refuses to pay.

**RESPONSE:** LT admits that the TTO does not have a tax base, and that it does not have any legitimate source of revenue other than the payments received from the school districts. LT otherwise denies the allegations of this paragraph.

16. The Treasurer uses a fiscal year commencing on July 1 and running through June 30 of the following year.

**RESPONSE:** LT admits the allegations of this paragraph.

17. For fiscal year 2014, the Treasurer sent its annual invoice to all school districts in April 2015. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$252,053.43. District 204 paid only \$242,321.00, leaving an unpaid balance that year of \$9,732.43.

**RESPONSE:** LT admits that for fiscal year (“FY”) 2014, the Treasurer sent LT an invoice in April 2015 demanding payment of \$252,053.43. LT also admits that LT paid \$242,321.00 to the TTO for FY2014. LT otherwise denies the allegations of this paragraph.

18. For fiscal year 2015, the Treasurer sent its annual invoice to all school districts in May 2016. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$395,094.69. District 204 paid only \$236,482, leaving an unpaid balance that year of \$158,612.69.

**RESPONSE:** LT admits that for FY 2015, the Treasurer sent LT an invoice in May 2016 demanding payment of \$395,094.69. LT also admits that LT paid \$236,482.00 to the TTO for FY2015. LT otherwise denies the allegations of this paragraph.

19. For fiscal year 2016, the Treasurer sent its annual invoice to all school districts in May 2017. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$322,352.21. District 204 paid only \$208,061, leaving an unpaid balance that year of \$114,291.21.

**RESPONSE:** LT admits that for FY 2016, the Treasurer sent LT an invoice in May 2017 demanding payment of \$322,352.21. LT also admits that LT paid \$208,061.00 to the TTO for FY2016. LT otherwise denies the allegations of this paragraph.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent, District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

**RESPONSE:** LT admits that for FY 2017, the Treasurer sent LT an invoice in May 2018 demanding payment of \$354,103.75. LT also admits that LT paid \$218,150.11 to the TTO for FY2017. LT otherwise denies the allegations of this paragraph.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

**RESPONSE:** LT denies the allegations of this paragraph.

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

**RESPONSE:** LT denies the allegations of this paragraph.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

**RESPONSE:** LT admits that the Treasurer holds certain funds of LT in an agency account.

LT otherwise denies the allegations of this paragraph.

24. An actual controversy exists between the 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.

**RESPONSE:** LT admits the allegations of this paragraph.

WHEREFORE, LT respectfully asks this Court to enter judgment in its favor, and against the TTO, on all claims set forth in the TTO's Complaint; to award LT its costs of suit; and to grant LT all other relief that is just and proper.

### **Affirmative Defense**

#### **First Affirmative Defense – American Rule Barring Recovery of Attorneys' Fees**

1. Illinois follows the American Rule regarding the award of attorneys' fees. Under that rule, each party to litigation must normally bear its own litigation expenses, regardless of who wins the case. The rule prohibits parties from recovering their attorney's fees from their opponents in the absence of express authorization contained either in a statute or in a contract between the parties.

2. In 2013, the TTO brought claims against LT in a Circuit Court of Cook County, Illinois case entitled *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*, 2013 CH 23386 ("the First TTO-LT Case").

3. The First TTO-LT Case currently is ongoing.

4. From fiscal year 2013 (“FY2013”) through FY2017, the TTO has attempted to recover a portion of its attorneys’ fees and related litigation costs associated with the First TTO-LT Case (“the TTO’s Attorney’s Fees”) by including the TTO’s Attorneys’ Fees in the annual pro rata expense bills that the Treasurer has sent to LT.

5. No Illinois statute expressly authorizes the TTO to recover any portion of the TTO’s Attorneys’ Fees from LT, either before or after the conclusion of the First TTO-LT Case.

6. No contract between the TTO and LT expressly authorizes the TTO to recover any portion of the TTO’s Attorneys’ Fees from LT, either before or after the conclusion of the First TTO-LT Case.

7. The TTO’s claim in this case relating to the recovery of a portion of the TTO’s Attorneys’ Fees through the annual pro rata expense bills sent to LT is barred by Illinois law adopting the American Rule on attorneys’ fees.

WHEREFORE, LT respectfully asks this Court to enforce the Illinois law adopting the American Rule regarding the award of attorneys’ fees in order to defeat that portion of the TTO’s claim in this case seeking to recover a portion of the TTO’s Attorney’s Fees; to award LT its costs of suit; and to grant LT all other relief that is just and proper.

**Counterclaim**

1. LT is a public school district organized under the laws of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

2. The TTO is a local public entity organized under the law of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

3. The TTO has three elected Trustees. The TTO’s Trustees select a salaried Treasurer (“the Treasurer”) to operate an office that performs accounting and investment functions.

4. LT is a member district of the TTO. LT’s membership in the TTO is mandated by state statute.

5. Under Illinois law, the TTO is charged with serving as the fiscal agent of LT and the other school districts and educational entities purportedly within the TTO’s jurisdiction (“the Other Districts”).

6. As the fiscal agent for LT, the TTO – including its Treasurer and other employees – had and has a duty to provide LT with truthful and complete information and documentation about financial matters involving LT.

7. From about June 2012 through the present, Michael Thiessen has been President of the TTO’s Board of Trustees.

8. From about October 2013 to June 2018, Dr. Susan Birkenmaier was the Treasurer of the TTO.

9. From about July 2018 through the present, Kenneth Getty has been the Treasurer of the TTO.

**Count I: Violation of 105 ILCS 5/8-7**

10. LT incorporates by reference the allegations in paragraphs 1-9 above.

11. Section 8-7 of the School Code, 105 ILCS 5/8-7, provides, in part, as follows:

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.

12. Accordingly, Section 8-7 requires the TTO to account to LT for all of LT's investment earnings, and to credit LT with the full amount of its investment earnings.

13. In 2013, the TTO informed LT and the Other Districts that it was holding interest income that the TTO had earned on behalf of the districts prior to July 1, 2013, but that it had failed to credit to the districts' agency accounts. The TTO further informed LT and the Other Districts that it would distribute these funds, and that it was making a distribution of \$500,000 to the districts.

14. At that time, however, the TTO failed to disclose to LT and the Other Districts that it was not crediting the districts with the full amount of the undistributed earnings that the TTO had located.

15. In 2017, LT learned that the TTO still was holding on to the balance of the undistributed earnings the TTO located in 2013.

16. Since at least fiscal year ("FY") 2013, the TTO has credited the agency accounts of LT and the Other Districts with investment income earnings that are less than the full amounts of the earnings the TTO actually received.

17. Since at least FY2013, LT has made repeated requests on the TTO to account for, and document, the investment interest earnings on the pooled investments that the TTO received, and LT's share of those earnings. LT has asked the TTO to explain and document, among other things, the total amount of quarterly and annual interest that the TTO has earned, the formula used to determine disbursement, the fees paid to various investment managers, and a breakdown of all earnings and disbursements to the member districts.

18. The TTO has repeatedly ignored and/or failed to cooperate in good faith with LT's requests for information and documentation about investment matters. Furthermore, the TTO



refuses to include in its annual audit reports the total annual investment earnings the TTO received, and the total annual investment earnings it distributed – critical figures that the TTO stopped disclosing in its audit reports beginning in FY2008.

19. Accordingly, since at least FY2013, the TTO has failed to comply with the requirements of Section 8-7 in at least the following ways:

- (a) Failing to credit LT with LT’s full share of investment income that the TTO earned on LT’s behalf prior to July 1, 2013 but failed to distribute to LT in those earlier years;
- (b) Failing to credit LT with LT’s full share of investment earnings since FY2013; and
- (c) Failing to fully account to LT for the TTO’s investments, earnings, distributions, and related financial information and documentation despite repeated requests from LT.

20. The TTO’s violations of Section 8-7 caused LT to suffer monetary damages. LT presently is unable to determine the amount of damages resulting from the TTO’s violations of Section 8-7 because the TTO has failed to provide sufficient information and documentation to LT, despite LT’s repeated requests.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count I; award LT compensatory damages in an amount to be determined at trial; prohibit the TTO from using funds that belong directly or indirectly to LT to pay the award; award LT its costs of suit; and award LT any other relief that is just and proper.

**Count II: Declaratory Judgment as to 105 ILCS 5/8-5 through -7**

21. LT incorporates by reference the allegations in paragraphs 1-20 above.

22. In this count, LT seeks a declaratory judgment concerning LT and the TTO’s respective rights and responsibilities under Sections 8-5, 8-6, and 8-7 of the School Code, 105 ILCS 5/8-5 through -7.

23. Section 8-5(a) of the School Code requires the Treasurer to maintain a “cash book” in which “he shall enter in separate accounts all moneys received and paid out, with the amount, date, from whom, to whom and on what account received or paid out ....” 105 ILCS 5/8-5(a).

24. Section 8-5(a) requires the Treasurer to maintain a “district account book” in which “he shall post from the cash book all receipts and expenditures on account of any district, with the amount, date, from or to whom, and from what sources and for what purposes.” 105 ILCS 5/8-5(a).

25. Section 8-5(a) gives school districts such as LT the right to inspect the Treasurer’s records of accounts, which “shall be subject at all times to the inspection of the ... school board members ....” 105 ILCS 5/8-5(a).

26. For the funds of an individual school district such as LT, Section 8-6 of the School Code requires the Treasurer to maintain a “cash book” with “separate balances” in which “he shall enter in separate accounts the balance, total of all moneys received in each fund, and the total of the orders countersigned or checks signed with respect to each fund and extend the balances and the aggregate cash balance for all funds balance at least monthly.” 105 ILCS 5/8-6.

27. Section 8-7 requires the TTO to account to LT for all of LT’s investment earnings, and to credit LT with the full amount of its investment earnings.

28. Since FY2013, the TTO has credited the agency accounts of LT and the Other Districts with investment income earnings that are less than the full amounts of the earnings the TTO actually received.

29. Since FY2013, LT has made repeated requests on the TTO to account for, and document, the investment interest earnings on the pooled investments, and LT’s share of those investments. LT has asked the TTO to explain and document, among other things, the total amount

of interest that the TTO has earned, the formula used to determine disbursement, the fees paid to various investment managers, and a breakdown of earnings and disbursements to the member districts.

30. The TTO has repeatedly ignored and/or failed to cooperate in good faith with LT's requests for information and documentation about investment matters. Furthermore, the TTO refuses to include in its annual audit reports the total annual investment earnings the TTO received, and the total annual investment earnings it distributed – critical figures that the TTO stopped disclosing in its audit reports beginning in FY2008.

31. An actual controversy exists between the TTO and LT concerning their respective rights, powers, and obligations under Sections 8-5, 8-6, and 8-7 of the School Code.

32. Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes this Court to make binding declarations of the parties' respective rights and obligations, having the force of final judgments, and to grant such further relief as this Court deems just and proper.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count II; to award LT its costs of suit; to grant LT such relief as is just and proper; and to enter a declaratory judgment declaring the rights and obligations of the parties as follows:

a. Section 8-5 and 8-6 of the School Code requires the Treasurer to maintain detailed records of all investment income the TTO receives, and all earnings belonging to LT, and to allow LT to inspect those records of those accounts.

b. Section 8-7 requires the Treasurer to fully account to LT for investment earnings on pooled investment funds of the school districts that include LT.

c. Section 8-7 requires the Treasurer to credit LT with the full amount of its investment earnings as those earnings are received.

**Count III: Declaratory Judgment as to 105 ILCS 5/8-4**

33. LT incorporates by reference the allegations in paragraphs 1-32 above.

34. In this count, LT seeks a declaratory judgment concerning LT and the TTO's respective rights and responsibilities under Section 8-4 of the School Code, 105 ILCS 5/8-4.

35. Section 8-4 requires each district to "pay a proportionate share of the compensation of the township treasurer ... and a proportionate share of the expenses of the township treasurer's office." 105 ILCS 5/8-4.

36. In 2013, the TTO brought claims against LT in a Circuit Court of Cook County, Illinois case entitled *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*, 2013 CH 23386 ("the First TTO-LT Case").

37. The First TTO-LT Case currently is ongoing.

38. In the First TTO-LT Case, the TTO alleged that the TTO brought claims against LT for the benefit of the Other Districts.

39. From FY2013 through the present, the TTO has attempted to recover its present and future attorneys' fees and related litigation costs associated with the First TTO-LT Case ("the TTO's Attorneys' Fees") by including the TTO's Attorneys' Fees in the annual pro rata expense bills that the Treasurer sent to LT. The TTO has indicated that these recovery attempts will continue into the future.

40. Since FY2013, the TTO has attempted to recover certain claimed expenses by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against those expenses, instead of crediting these funds to LT and the Other Districts.

41. Since FY2013, the TTO has attempted to recover for expenses incurred in several prior years, which expenses the TTO now claims it underbilled in those years, by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against the TTO's claimed past billing shortfalls, instead of crediting these funds to LT and the Other Districts.

42. Since FY2013, the TTO has attempted to reduce its ongoing deficits by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against the TTO's claimed deficits, instead of crediting these funds to LT and the Other Districts.

43. Section 8-4 only applies to (a) the office expenses of (b) the Treasurer.

44. The TTO has incurred and will incur the TTO's Attorneys' Fees, not the Treasurer. Furthermore, the TTO's Attorneys' Fees are not office expenses, as they are not expenses for accounting or investment functions.

45. Since FY2013, the TTO also has attempted to recover, through annual pro rata billings purportedly made pursuant to Section 8-4, for certain expenses that either are not, or do not appear to be, office expenses of the Treasurer, and have largely refused LT's repeated requests made to the TTO to explain and document those improper and/or questionable expenses.

46. LT does not dispute the TTO's authority under Illinois law to retain counsel ostensibly for the benefit of the Other Districts (although that is not what the TTO actually did in the First TTO-LT case). However, no provision of the School Code allows the TTO to charge LT for a proportionate share of the costs of the TTO's claimed representation of the Other Districts, which representation is to the detriment and disadvantage of LT.

47. Illinois follows the American Rule regarding the award of attorneys' fees. Under that rule, each party to litigation must normally bear its own litigation expenses, regardless of who

wins the case. The rule prohibits parties from recovering their attorney's fees from their opponents absent express authorization contained either in a statute or in a contract between the parties.

48. Section 8-4 only authorizes the TTO to bill LT for a proportionate share of the Treasurer's compensation and the expenses of the Treasurer's office. Nothing in Section 8-4, or other provisions of the School Code, authorizes the TTO to seize earnings and/or assets belonging to LT and the Other Districts and use those assets to pay the TTO's Attorneys' Fees, to offset against claimed underbillings of expenses in past years, or to reduce the TTO's claimed deficits.

49. An actual controversy exists between the TTO and LT concerning their respective rights, powers, and obligations under Section 8-4 of the School Code.

50. Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes this Court to make binding declarations of the parties' respective rights and obligations, having the force of final judgments, and to grant such further relief as this Court deems just and proper.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count III; to award LT its costs of suit; to grant LT such relief as is just and proper; and to enter a declaratory judgment declaring the rights of the parties as follows:

a. Section 8-4 of the School Code and Illinois law governing the recovery of attorneys' fees in litigation prohibits the TTO from attempting to recover from LT any portion of the TTO's Attorneys' Fees in the past, present, or future through either annual pro rata expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

b. Section 8-4 of the School Code is the only section of the School Code that authorizes the TTO to seek recovery of the expenses of the Treasurer's office from LT, and accordingly, the TTO could not and may not make recoveries of claimed expenses of the

Treasurer's office in current or past years, or reductions in the TTO's claimed deficits, through transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

c. Section 8-4 of the School Code permits the TTO to recover from LT, through pro rata expense billings, only the expenses of the Treasurer's office, and accordingly, the TTO could not and may not include in those billings any expenses that are not actual expenses of the Treasurer's office (*i.e.*, that are not for the Treasurer's accounting and investment functions), or for those expenses which the TTO refuses to provide sufficient information and documentation from which to confirm that the expenses are actual and legitimate expenses of the Treasurer's office.

d. Section 8-4 does not permit the TTO to issue invoices for expenses of the Treasurer's office, and then, in later years, decide that it underbilled those expenses in prior years and seek to recover those alleged underbillings through further expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

**Count IV: Breach of Fiduciary Duty**

51. LT incorporates by reference the allegations in paragraphs 1-50 above.

52. In this count, LT does not seek a recovery of damages that would duplicate any of the damages awarded under another count in this Counterclaim.

53. As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to manage the funds and investments of LT, distribute investment earnings to LT, and invoice LT for the expenses of the Treasurer's office in a fair, responsible, open, candid, and professional manner.

54. As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to respond to LT's reasonable inquiries for information and documentation concerning the funds and investments of LT, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing from the TTO to LT of the claimed expenses of the Treasurer's office.

55. Since at least FY2013, the TTO has operated with a deficit.

56. The TTO has financed its deficit by borrowing money from the funds of LT and the Other Districts.

57. No provision in the School Code or any other Illinois law authorizes the TTO to borrow money from the funds of LT and the Other Districts. LT and the Other Districts never authorized these uses of their funds.

58. West 40 Intermediate Service Center #2 ("West 40") is a regional education agency operating in the Western Cook County suburbs.

59. West 40's geographic area includes Lyons Township and additional areas outside of Lyons Township.

60. West 40's geographic area includes school districts that are both inside and outside of the jurisdictional boundaries of the TTO.

61. Since at least FY2013, the TTO has provided financial assistance to West 40 using the agency funds of LT and the Other Districts. LT and the Other Districts never authorized these uses of their funds.

62. Accordingly, since at least FY2013, the TTO has breached its fiduciary duty to LT in at least the following ways:



- (a) Failing to credit LT with LT's full share of investment interest that the TTO earned on LT's behalf prior to July 1, 2013, but failed to distribute to LT as required during those earlier years;
- (b) Failing to credit LT's agency account with LT's full share of investment earnings since FY2013;
- (c) Failing to fully account to LT for the TTO's investments, earnings, and distributions and related financial information and documentation despite repeated requests for information and documentation from LT;
- (d) Attempting to recover from LT through annual pro rata expense billings the TTO's Attorneys' Fees, rather than charging those fees solely to the Other Districts;
- (e) Attempting to recover from LT through annual pro rata expense billings other expenses that are not expenses of the Treasurer's office, and/or other expenses that the TTO has refused to explain and document in order to show that they are actual and legitimate expenses of the Treasurer's office;
- (f) Attempting to recover from LT through the misapplication of insurance recoveries for the TTO's alleged underbillings in the annual pro rata expense invoices sent to LT and the Other Districts in prior years;
- (g) Failing to promptly and candidly respond to communications from LT seeking information and documentation concerning the funds and investments of LT, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing of LT for the expenses of the Treasurer's office;

(h) Using the funds of LT, without its consent and without statutory authority, to finance the deficits of the TTO; and

(i) Using the funds of LT, without its consent and without statutory authority, to provide financial assistance to West 40.

63. The TTO's violations of its fiduciary duty to LT caused monetary damages to LT. LT presently is unable to determine the amount of damages resulting from the TTO's violations of fiduciary duty because the TTO has failed to provide sufficient information and documentation to LT, despite LT's repeated requests.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count IV; award LT compensatory damages in an amount to be determined at trial; prohibit the TTO from using funds that belong directly or indirectly to LT to pay the award; award LT its costs of suit; and award LT any other relief that is just and proper.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

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# EXHIBIT 3

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.

FILED DATE: 11/21/2018 12:05 PM 2018CH08263

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 Treasure 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;

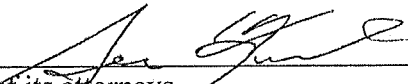
F. District 204 is obligated to pay \$511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that District 204 performed and that was paid by the Treasurer from the Treasurer's General Fund;

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.

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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



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Michael Thiessen, on behalf of Plaintiff