

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

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

Plaintiff/Counter-Defendant,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendant/Counter-Plaintiff.

Case No. 13 CH 23386

Hon. Sophia H. Hall

**LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204'S VERIFIED COUNTERCLAIM  
FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

Defendant/counter-plaintiff LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204") asserts the following counterclaim against plaintiff/counter-defendant TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST (the "TTO"):

**INTRODUCTION**

1. District 204's counterclaim against the TTO arises primarily out of an agreement reached in 1999 between District 204 and the TTO regarding *pro rata* expense setoffs that was implemented at District 204's request in an effort to save taxpayer expenses over the life of that agreement.

2. District 204's counterclaim also seeks to challenge allegations that District 204 received excessive investment interest distributions over which it had no control.

3. Lastly, District 204's counterclaim seeks to challenge the TTO's interpretation of statutory authority.

FILED  
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## THE PARTIES

4. 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.

5. The TTO 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.

6. The TTO provides certain financial-related services to school districts in Township 38 North, Range 12 East, including District 204.

## THE PARTIES' AGREEMENT TO SAVE TAXPAYER DOLLARS

7. District 204's relationship with the TTO's office dates back many years. Like other school districts, over time, District 204 began to perform a number of the financial-related services that the TTO performed for certain school districts.

8. Recognizing this fact, in 1999, District 204 and the TTO entered into an agreement by which the TTO would invoice District 204 for its *pro rata* share of certain financial-related services, but then offset from that invoice the expenses that District 204 incurred internally in performing certain services (the "1999 Agreement").

9. District 204 relied on the authority of Robert Healy, the TTO Treasurer who negotiated, confirmed, and administered the 1999 Agreement.

10. The Agreement saved the TTO the expense of performing work that District 204 could perform more efficiently, which provided a substantial financial benefit to the taxpayers of Lyons Township, including the other school district members of the TTO.

11. District 204 and the TTO performed under the 1999 Agreement from 1999 until 2012. Each fiscal year, the TTO would issue an invoice to District 204, and District 204 would respond by providing a calculation of its expenses incurred pursuant to the 1999 Agreement. In years when the amount of the TTO invoice exceeded District 204's expenses under the 1999

Agreement, District 204 paid the TTO the balance due. In years when District 204's expenses exceeded the amount of the TTO invoice, District 204 received a credit toward future expenses. At no time from 1999 through 2012 did the TTO object to or contest the 1999 Agreement. In fiscal years 1999 through 2012, the TTO accepted and approved this course of dealings between the parties.

12. A similar and related agreement was reached between District 204 and the TTO regarding the payment of audit fees relating to the 1999 Agreement. During the fiscal years 1993 through 2012, it was necessary for an auditor to examine District 204's books and records to substantiate the accuracy of its financial accounting for the offset of *pro rata* expenses. Beginning in 1993 and continuing through 2012, the TTO, through its Treasurer, Healy, agreed to pay District 204's annual audit fees ("1993 Agreement"). Healy had actual or apparent authority to enter into the 1993 Agreement and the 1999 Agreement on behalf of the TTO.

13. Pursuant to the parties' 1993 Agreement, the TTO paid District 204's audit fees for each year from 1993 through 2012.

14. At no time from 1993 through 2012 did the TTO state any objection to District 204 regarding audit fee payments.

15. On information and belief, at no time from 1993 through 2012 did the TTO maintain an accounts receivable balance for District 204 for audit fees, *pro rata* expenses, or excessive investment interest payments.

16. At no time from 1993 through 2012 did the TTO provide District 204 with a statement of accounts receivable for audit fees, *pro rata* expenses, or excessive investment interest payments.

17. At no time from 1993 through 2012 did the TTO post a balance due from District 204 for audit fees, *pro rata* expenses, or excessive investment interest payments.

18. Pursuant to 105 ILCS 5/17-1, *et seq.*, District 204 examined its finances and passed seventeen separate budgets in reliance on the 1993 Agreement and 1999 Agreement with the TTO.

19. Requiring District 204 now to pay past audit fees notwithstanding the 1993 Agreement would cause tremendous harm to District 204's current operations and inflict negative consequences on District 204 taxpayers and students into the foreseeable future.

20. Requiring District 204 now to pay past *pro rata* expenses notwithstanding the 1999 Agreement would also cause tremendous harm to District 204's current operations and inflict negative consequences on District 204 taxpayers and students into the foreseeable future.

#### **THE TTO's MISMANAGEMENT AND FAILURE OF OVERSIGHT**

21. For fiscal years 1995 to the present, one of the TTO's most fundamental duties has been to pay each member school district, including District 204, its share of pooled investment interest income. Neither District 204, nor any other member district, had control over the TTO's calculation and payment of annual investment interest.

22. Notwithstanding the TTO's obligation to pay proper investment interest to all member school districts, District 204 has seen its share of investment income fall dramatically in recent years without explanation.

23. On information and belief, the TTO has made interest payment allocations to member school districts based on an improper mathematical formula.

24. Pursuant to 105 ILCS 5/5-20, the TTO was obligated, "[a]t each regular meeting, and at such other meetings as they may think proper," to "examine all books, notes, mortgages, securities, papers, moneys and effects of the corporation, and the accounts and vouchers of the

township treasurer or other township school officer, and shall make such order for their security, preservation, collection, correction of errors, if any, and for their proper disposition, as may be necessary.”

25. The TTO was required to conduct the examination described in 105 ILCS 5/5-20 at all regular meetings, including those meetings that occurred from 1993 through 2012.

26. Notwithstanding the TTO’s statutory oversight obligations, its former Treasurer, Robert Healy (“Healy”), was allegedly able to steal or improperly spend on personal expenses over \$1 million in member school districts’ funds. Healy has been indicted, sued both civilly and criminally, and forced to resign as treasurer. District 204 had no knowledge of such activities during the relevant time period.

27. The TTO has recovered substantial insurance proceeds based on alleged misconduct by Healy.

28. The TTO has refused to disclose the amount of the insurance proceeds it has recovered based on Healy’s purported misconduct, and has otherwise refused to distribute the insurance proceeds to member school districts.

29. 105 ILCS 5/5-17 provides, “[i]f the income of the permanent township fund is not sufficient to meet such items the additional amount needed may be taken from the total of other funds subject to distribution, each district . . . being charged as its share of such items the proportion which the amount of school funds of the district handled by the township treasurer bears to the total amount of all school funds handled by such treasurer.”

30. Certain of the funds the TTO collected, or attempted to collect, from member school districts, including District 204, for their purported *pro rata* share of expenses included costs that did not fall within any category set forth in 105 ILCS 5/5-17.

31. For example, on information and belief, since 2012, the TTO has spent *pro rata* share funds it collected from member school districts on services provided by a public relations firm.

32. Such public relations firm expenses are not of the type permitted by 105 ILCS 5/5-17.

33. Any public relations firm expense the TTO has incurred did not involve a general public interest.

34. In addition, since 2012, the TTO has spent *pro rata* share funds it collected from member school districts on services provided by a financial advisor.

35. The financial advisor expenses are unnecessarily duplicative of the financial-related services the TTO provides to member school districts.

36. The financial advisor expenses are not the type permitted by 105 ILCS 5/5-17.

37. Any financial advisor expense the TTO has incurred does not involve a general public interest.

38. On information and belief, other “pro rata share” expenses the TTO has imposed on member school districts, including District 204, are outside the charges permitted by 105 ILCS 5/5-17.

39. On information and belief, other “pro rata share” expenses the TTO has imposed on member school districts, including District 204, have not involved any general public interest.

40. After first learning of the TTO’s claims, District 204 requested that the TTO provide supporting documentation substantiating its allegations, and further requested that the TTO provide documentation showing the current amounts of interest income owed to District

204. The TTO has repeatedly refused to provide District 204 with documentation or other support for its claims.

### COUNT I – ACCOUNTING

41. District 204 adopts and realleges Paragraphs 1 through 40 above as this Paragraph 41 of Count I as though fully set forth herein.

42. District 204 has placed trust and confidence in the TTO by, among other things, entrusting it and its Treasurer with access to school district funds and authorizing them to engage in certain financial transactions. As a result of that trust and confidence, the TTO has a special or fiduciary relationship with its member school districts, including District 204.

43. The TTO is required to act in good faith and in the best interests of its member school districts, including District 204, when incurring expenses, preparing and submitting *pro rata* share invoices, accounting for the funds of member school districts, calculating interest, making interest payments, and making other financial decisions that affect member school districts.

44. The TTO had an obligation to track and record its financial-related activities properly and to keep proper business records.

45. On information and belief, as a result of the TTO's mismanagement and failed oversight, it invoiced and received purported *pro rata* share funds from District 204 relating to expenses the TTO was not legally entitled to incur or charge to member school districts. District 204 also believes that the TTO has failed to pay District 204 proper interest earnings on millions of dollars in investments.

46. Despite numerous requests, the TTO has failed to provide District 204 with requested financial data to verify or refute its claims. Without such information, including books

and records, District 204 cannot ascertain what it is owed or the validity of the TTO's alleged claims.

47. District 204 has demanded from the TTO the books and records necessary for conducting an accounting for the period of January 1, 1993 through the present, but the TTO has refused to turn over those books and records.

48. District 204 has requested that the TTO provide a full accounting for the period of January 1, 1993 through the present, but, to date, the TTO has failed to provide the requested accounting.

49. District 204 propounded requests to admit facts on the TTO in an attempt to learn additional information about the basis of the TTO's claims, but the TTO refused to admit or deny many of those requests, claiming that it lacked knowledge.

50. On information and belief, the TTO has never conducted a forensic audit of the books and records that form the basis of its claims in this action, as reflected by its changes in position regarding the amounts the TTO claims District 204 owes it.

51. For example, the original complaint the TTO filed claimed District 204 owed a *pro rata* share payment of \$2,583,531.68, while the amended complaint sought \$2,628,807 in *pro rata* share payments (a difference of \$45,275.32).

52. Similarly, the TTO's original complaint claimed the TTO overpaid interest to District 204 in the amount of \$1,380,496.53, while the amended complaint alleged the interest overpayment was \$1,574,636.77 (a difference of \$194,140.24).

53. Furthermore, the original complaint the TTO filed alleged District 204 owed audit fees of \$473,174.85, while the amended complaint alleges the amount due is \$511,068.60 (a difference of \$34,893.75).

54. Because the books and records relating to the TTO's financial activities affecting District 204 are exclusively within the control of the TTO, District 204 has an inadequate legal remedy in that it cannot evaluate the TTO's claims or determine the amount of damages it has suffered as a result of the TTO's misconduct.

55. District 204 is unable to examine the merits of the TTO's claims because it does not have access to the TTO's books and records.

56. District 204 respectfully requests that the Court enter an order requiring the TTO to make a strict accounting of all assets it holds, all investments it has made, all interest payments it has made to member school districts, all *pro rata* share expenses it has invoiced, and all expenses it has paid that in any way have affected District 204, from January 1, 1993 through the present.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 respectfully requests that this Court enter an order: (1) requiring plaintiff/counter-defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST, to make a strict accounting of all assets it holds, all investments it has made, all interest payments it has made to member school districts, all *pro rata* share expenses it has invoiced, and all expenses it has paid that in any way have affected District 204, from January 1, 1993 through the present; (2) requiring the TTO to provide District 204 with access to all such financial records for purposes of inspection and copying; and (3) granting such further relief as the Court deems just and reasonable.

#### **COUNT II – DECLARATORY JUDGMENT AND INJUNCTION**

57. District 204 adopts and realleges paragraphs 1 through 56 above as this Paragraph 57 of Count II as though fully set forth herein.

58. District 204 has no adequate remedy at law to redress the TTO's ongoing misconduct.

59. An actual controversy exists between the parties to this action regarding their financial obligations and the TTO's statutory duties to member school districts, including District 204.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Court enter a declaratory judgment in its favor and against plaintiff/counter-defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST, declaring that:

a. The 1999 Agreement between District 204 and the TTO was valid and enforceable;

b. The 1993 Agreement between District 204 and the TTO was valid and enforceable;

c. The TTO did not terminate the 1999 Agreement or the 1993 Agreement with District 204 at any time between 1993 and 2012;

d. The TTO has improperly withheld interest payments due and owing to District 204;

e. The TTO has improperly withheld insurance proceeds due and owing to member districts, including District 204;

f. The TTO improperly charged school districts, including District 204, for purported *pro rata* expenses not allowable under 105 ILCS 5/5-17 or otherwise permitted by law; and

g. The TTO and its Treasurer failed to comply with the financial and oversight requirements, including but not limited to those set forth in 105 ILCS 5/5-17 and 105 ILCS 5/5-20.

Because it has no adequate remedy at law to redress the TTO's ongoing misconduct, District 204 further requests that the Court issue a permanent injunction requiring the TTO to:

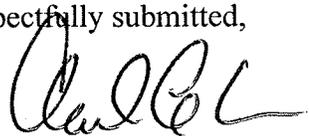
h. Cease spending funds paid by member school districts on expenses not permitted by law;

i. Cease invoicing member school districts for *pro rata* share expenses not permitted by law; and

j. Otherwise comply with all requirements set forth in the Illinois School Code, 105 ILCS 5/1-1, *et seq.*

Respectfully submitted,

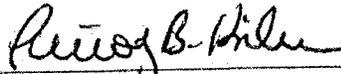
By: \_\_\_\_\_

  
One of the Attorneys for Defendant/  
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**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing pleading 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: 2/9/2015