

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

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

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CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIV.

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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

I. INTRODUCTION

LT’s Motion, seeking to impose the 5-year limitations period set forth in 735 ILCS 5/13-205, should be denied because no limitations period applies to the TTO’s claims for 3 separate reasons. First, the limitations period does not apply because the TTO has at all times held the applicable public monies in trust. Second, even if this were not so, the TTO seeks to enforce a “public right” as the Illinois Supreme Court has defined that phrase. Third, the liability of LT is created by statute, not by the conduct of the parties.

LT spends some of its Motion arguing whether the township trustees “system” is good or bad for Cook County (Motion at 3-5). This is a purely political issue for the political branches of

government to address. This debate is not germane to the issue before the Court and the TTO will not respond to it. The facts and arguments that *are* germane follow.

II. RELEVANT FACTS

A. The Township Trustees And Treasurer.

Plaintiff is a body politic comprised of three Township Trustees who are elected by voters within Lyons Township. (See Amend. Compl. and Answer, Exs. 1 and 2 at ¶¶1, 5; 105 ILCS 5/5-2.) The Trustees appoint the Lyons Township School Treasurer (“Treasurer”). (See *id.*; 105 ILCS 5/8-1.) The Treasurer provides financial services for 11 school districts: LT; 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. (See Exs. 1 and 2 at ¶6.) In total, these school districts consist of 38 schools educating about 20,000 students. (See *id.* at ¶7.) As LT notes, the Treasurer during the time period relevant to this lawsuit was Robert Healy. (Motion at 4.)

The Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves 15 school districts; and the West 40 Intermediate Service Center, which serves 40 school districts. (See Exs. 1 and 2 at ¶6.)

The Treasurer is statutorily obligated to, *inter alia*, “[c]ollect from the township and county collectors the full amount of taxes levied by the school boards in his township;” “[b]e responsible for the receipts, disbursements and investments arising out of the operation of the school districts under his supervision; and “[p]ay all lawful orders issued by the school board of any district in his township.” 105 ILCS 5/8-17(a)(2), (a)(3) and (a)(9). In other words, the

Treasurer is required by statute to collect and manage the funds of each school district, invest those funds, and pay the bills of those districts as they direct. The Treasurer is the “only lawful custodian” of these funds. 105 ILCS 5/8-7. Accordingly, the school districts themselves do not have custody of their own funds.

B. The Treasurer Is A Zero-Sum Office.

The Treasurer is compensated for his or her services, and the Treasurer has certain expenses of office, *e.g.*, leased office space, additional staff, computers and office supplies. (Exs. 1 and 2 at ¶24; Affidavit of Dr. Birkenmaier, Exhibit 3, at ¶5.) Of critical importance, the *only* source of revenue to pay for these expenses is the member districts. (See 105 ILCS 5/8-4; Ex. 3 at ¶6.) The Plaintiff does not have a tax base or any other source of revenue. (Ex. 3 at ¶6.)

Accordingly, the School Code states that each district “shall pay a proportionate share” of the Treasurer’s compensation and expenses of office. 105 ILCS 5/8-4. This share “shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of funds as belong to each such...district.” *Id.* To ensure that each district pays its share, the Treasurer sends annually an invoice to each district for its proportionate share for the prior fiscal year. (Ex. 3 at ¶5.)¹

LT acknowledges it owns about 25% of the total funds the Treasurer handles. (Motion at 4.) This means LT is statutorily required to pay about 25% of the Treasurer’s compensation and expenses in any given year. It does not matter if LT thinks this is a good bargain or a bad bargain, or if LT adores or abhors the township trustee system. *If LT does not pay its annual invoice from the Treasurer setting forth LT’s proportionate share of the Treasurer’s expenses, this necessarily creates a cash shortfall in funding, i.e., a public deficit.* The Plaintiff has no other source of revenue to “make up” the shortfall. This means, absent relief from this Court, the

¹ The Treasurer uses a fiscal year running from July 1 to June 30. (Ex. 3 at ¶5.)

other school districts will have to absorb the amounts LT did not pay. This necessarily means they will have fewer funds available for their own use. Such is the nature of a zero-sum.

As noted above, one of the Treasurer's duties is investing the property taxes collected. (See 105 ILCS 5/8-17(a)(9).) The Treasurer is permitted to combine (*i.e.*, pool) for investment purposes the monies each district owns. 105 ILCS 5/8-7. These monies must be "accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the...school district...from which such investment was required." *Id.* At all times relevant, the Treasurer did, in fact, pool investments. (Ex. 3 at ¶7.) Necessarily, each member district has its share of the pooled investments and its share of the investment income, and the Treasurer was obligated to properly credit these amounts to each member district. If LT was over allocated-investment return, this *necessarily* means that the remaining districts were under-allocated investment return.

Understanding the zero-sum nature of the Treasurer's office is critical. The Treasurer is a custodian of funds that belong to others, and the only way the Treasurer pays its bills is by invoicing each district for their proportionate share of those bills. A good analogy is that the Treasurer is the trustee of a trust with over a dozen different beneficiaries. The *corpus* of the trust is public tax dollars. If one beneficiary does not pay enough of the trustee's expenses, or is allocated too much investment return, that is *necessarily* to the detriment of the other beneficiaries. There is no way around this logic, no matter how much LT wishes otherwise. The only wrinkle in this case is that the trustee and each of the beneficiaries are public bodies.

C. The Three Claims At Issue.

As LT notes, there are three distinct claims (or "pots") in this case. (Motion at 1-2 and 5-8.) First, there is LT's failure to pay its proportionate share of the Treasurer's compensation and

expenses of office for fiscal years 2000 through 2012.² LT does not dispute that it did not pay the Treasurer's invoices, but instead argues that the parties entered into an agreement in 2000 for the purposes of determining what portion of annual invoices LT actually had to pay. The TTO disputes the legitimacy of this purported agreement. The legitimacy of this "agreement," however, is not at issue in LT's Motion. The sole issue is whether the limitations period applies to the TTO's current efforts to require LT to now pay its share of the expenses, totaling \$2,628,807.

Second, there is Robert Healy's improper over-allocation of investment income to LT during the period fiscal year 1995 through fiscal year 2012, totaling \$1,574,636.77. Although LT argues why it believes the TTO's analysis of this issue is erroneous, this is not at issue in the Motion. The sole issue is whether the limitations period applies to the TTO's efforts to rectify the over-allocations given to LT.

Third, there is the fact that during the period fiscal year 1993 through fiscal year 2012, LT engaged an accounting firm (either Baker Tilly or its predecessors) to undertake the statutorily required annual audit of LT. (See 105 ILCS 5/3-7.) A fair reading of Section 3-7 is that each district is required to pay for its own audit. Indeed, during this time period, the other school districts within Lyons Township did pay for their own annual audits. (Ex. 3 at ¶11.) For some inexplicable reason, however, Robert Healy paid for LT's audit in each of those years, in the total amount of \$511,068.60, and treated it as an expense of his office. This means that every district paid for its own audit *plus* was invoiced for a proportionate share of LT's audit. Whether LT was lawfully required to pay for its own annual audit, however, is not at issue in the Motion.

² In its Motion, LT asserts the relevant time period for this claim is 2000 through 2012. (Motion at 2.) This is not accurate, the TTO is suing for the time period "fiscal years 2000 through 2013...." (Exs. 1 and 2 at ¶35.) Moreover, the TTO uses a fiscal year of July 1 and ending June 30. Thus, the relevant time period is actually July 1, 1999 through June 30, 2013. (Ex. 3 at ¶5.)

All that is at issue is whether the limitations period applies to the TTO's efforts to remedy the situation so that the other school districts are not forced to pay for LT's audit.

III. ARGUMENT

A. **Limitations Periods Do Not Apply Where Public Funds Are Held In Trust; Where A "Public Right" Is Being Enforced; Or Where The Liability Of A Defendant Is Statutorily Created.**

The TTO does not argue that the limitations period is inapplicable merely because this case involves township school trustees, as LT suggests. (Motion at 15-17.) Nor does the TTO argue that limitations periods in general are "not important." (Motion at 8-9.) Rather, no limitations period applies to the claims at issue here for the three reasons set forth at the beginning of this Response: (i) the Treasurer has at all times held the applicable public monies in trust; (ii) the TTO seeks to enforce a "public right" as the Illinois Supreme Court defines that phrase, and (iii) LT's liability is statutorily created and not dependent upon the conduct of the parties.

1. **Limitations Periods do Not Apply where Public Funds are Held in Trust.**

On pages 16-17 of its Motion, LT quotes from the opinion of the Illinois Supreme Court in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653, 656 (1883):

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

LT's endorsement of this statement of the law is dispositive of this issue in the Motion.

In that case, a township treasurer erroneously paid certain taxes it had collected to School District No. 1, instead of paying them to School District No. 5. District No. 1 then filed suit against District No. 5 to recoup the erroneous payment. District No. 5 asserted the statute of

limitations as a defense, and the Illinois Supreme Court affirmed this defense, as quoted above. The key fact was that once the funds were *paid by the Treasurer to District No. 5*, those funds were no longer being held in public trust. There was “no proper trust relationship” *between the two school districts. Id.* Hence, the limitations period was applicable.

Here, there is unquestionably a “proper trust relationship” between the Treasurer and LT. The parties agree that the Treasurer holds funds for LT and the other districts in trust. The very language quoted by LT establishes that the limitations period does not apply in this case.

In *Trustees of Schools v. Arnold*, 58 Ill. App. 103 (4th Dist. 1895), certain Trustees filed suit against a school treasurer alleging he mishandled funds over the *preceding 24 years. Id.* at 104. The court explained that the limitations period was not applicable as to funds held by the treasurer and held that “as to any school funds in the hands of the treasurer, the plea of the statute of limitations were not well pleaded” *Id.* at 108-10.

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

Here, by statute, 105 ILCS 5/8-7, the Treasurer is the only lawful custodian of all of the funds at issue, and the Treasurer holds those funds in trust for the school districts. So long as the funds remain in the control of the Treasurer, the statute of limitations is not a defense for any of

the three claims at issue. Indeed, the undisputed facts are that the funds for each “pot” have never left the Treasurer’s custody.

With respect to the allocation of investment income, the income is not “paid” to each member district, *i.e.*, the Treasurer does not issue a check. Rather, the Treasurer only makes a bookkeeping entry reflecting that the income has been credited to each district. (Ex. 3 at ¶8.) The Treasurer here seeks to do what the City of Lincoln sought– to ascertain the amounts of monies properly due the parties under State law and then perform the ministerial act of properly re-crediting those monies. *See* 81 Ill. at 159-60. The Treasurer has always had custody of the funds at issue.

With respect to the audit costs, Baker Tilly might be able to assert a limitations defense because the funds paid *to it* left the Treasurer’s custody.³ The TTO, however, is not suing Baker Tilly to recoup those funds. Rather, the TTO is seeking to ensure that LT is charged for the cost of the payments to Baker Tilly by having the charges applied to LT, as opposed to the Treasurer’s office. Because the charges were applied to the Treasurer’s office in the first instance, this meant that each other school district was billed for LT’s audit. This is an internal bookkeeping matter that can be reflected on a future invoice to LT.

Finally, as to the third “pot,” LT argues that when it wrote checks to the Treasurer to pay its proportionate share, such check were drawn on an LT bank account. (See Motion at 7-8.) This misses the mark, factually, because even when the funds are physically located in an LT bank account, the Treasurer continued to remain the only lawful custodian of the funds. By way of illustration, from time-to-time the Treasurer places funds into a local bank account upon which LT may write checks. The Treasurer continues to be the custodian of these funds, however, until

³ The TTO does not concede that Baker Tilly would be able to successfully assert such defense, due to the other arguments set forth in this Response.

such time as the money is paid to a third-party vendor. When LT wants to pay an a vendor, LT must get the Treasurer to sign the check for the payment; and when the vendor receives the check and draws upon it, only then does the money finally leave the Treasurer's control. Only at that point does the Treasurer no longer hold it in trust. (See Ex. 3 at ¶9.)

In this lawsuit, regardless, *the TTO is not seeking to recover the payments that LT made to the Treasurer*. Rather, the TTO is seeking to recover the funds that LT never paid in the first instance. The funds to be collected will come from LT's bank account or from the pool of funds the Treasurer has allocated to LT – but the funds will have been in the Treasurer's custody the entire time and, therefore, the limitation period does not apply.

2. Limitations Periods do Not Apply Because the TTO is Seeking to Enforce a Public Right.

LT's argument that *People v. Oran*, 121 Ill. 650 (1887) is controlling is wrong. (See Motion at 10-11.) While that case did discuss the concept of public versus private rights, the decisions of the Illinois Supreme Court 100 years later, in *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983), and *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989), provide the current test for differentiating the two rights. Where a plaintiff seeks to enforce "public rights," limitations periods do not apply. The Supreme Court has explained that this is because the public should not suffer due to the negligence of public officers and agents in failing to promptly assert causes of action. *Shelbyville*, 96 Ill. 2d at 461; *AC&S*, 131 Ill. 2d at 472.

Rather than examine these more recent holdings of the Illinois Supreme Court on the issue, LT instead focuses on a decision of the Fourth District of the Appellate Court, *Champaign County Forest Preserve District v. King*, 291 Ill. App. 3d 197 (4th Dist. 1997). This case is

factually inapposite and does not run counter to the holding of the Supreme Court in *Shelbyville* and *AC&S*. LT cites to *King* just because it likes the holding there better.

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

Here, the TTO is a single body politic, but unlike the City of Shelbyville, it is suing effectively on behalf of the other 10 other school districts and 38 schools the Treasurer serves, along with the additional 2 educational entities (the LaGrange Area Department of Special Education and the West 40 Intermediate Service Center) providing services to 15 and 40 further school districts, respectively. Certainly, the TTO and its member districts are not statutorily charged with building and maintaining streets. But this does not distinguish this case from *Shelbyville*. Rather, the TTO and its member districts are charged with educating the roughly 20,000 students in their care. Reallocating the total amount of \$4,714,511 at issue in this lawsuit amongst the member districts permits those districts to use this money to fulfill their obligation to provide public school education. LT's suggestion that this is not a sufficient public purpose is highly questionable, particularly coming from another school district.

Six years after *Shelbyville*, the Supreme Court again addressed the concept of “public rights” in *AC&S*, and set forth a three-factor test to determine whether a “public right” was at issue. In *AC&S*, 34 school districts sought to recover from the asbestos industry the cost of repairing or replacing asbestos containing materials. 131 Ill. 2d at 436. The defendants argued a “public right” was not involved because the remediation involved only a select number of school buildings. *Id.* at 472-74.

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

With respect to the first factor, the TTO effectively brings this lawsuit on behalf of all of the other member districts it serves, along with the schools and students in those districts. Showing a total misunderstanding of the zero-sum nature of the Treasurer’s office, LT dismissively argues that “[a]t most, [this] case would involve shifting some money from one governmental body, LT, to another, the TTO.” (Motion at 14.) The fallacy of this argument has been demonstrated above.

If the TTO cannot properly account for the funds at issue, then the Treasurer necessarily *must* pass that loss along to its member districts. The Treasurer has no other way of making the districts whole. It does not have its own funds upon which to draw. Those other districts will have to make good LT’s failure to pay its proportionate share of the Treasurer’s expenses and

will have to absorb the cost of LT's annual audit; they will have to accept the fact that LT was allocated some of the investment return that should have gone to them.

These districts would be denied the use of the funds for whatever lawful purposes they may be put. While this money would presumably not be spent to remediate asbestos, there cannot be serious question that the public schools in those districts, and their students, would benefit from being re-allocated the \$4.7 million at issue. The TTO itself gets no fiscal benefit, nor does it get a financial detriment – everything gets passed to the other districts and LT gets to retain the unlawful benefits given to it.

The second factor looks at whether the TTO has an obligation to act. LT argues that the TTO cannot demonstrate it was obligated to act “by filing this case.” (Motion at 14.) The issue, however, is not whether State law obligates a *lawsuit*. In neither *Shelbyville* nor *AC&S* did the statute at issue require the political bodies to file a lawsuit. Rather, it imposed upon them an obligation to take actions (repairing roads and remediating asbestos), and the public bodies filed suit to recoup the funds at issue in those actions.

The Treasurer also has statutory obligations. The Treasurer is “the only lawful custodian of all school funds . . . and *shall* demand receipt for and safely keep” those funds. 105 ILCS 5/8-7. This alone imposes an obligation upon the Treasurer to properly hold and manage the funds belonging to the school districts. The TTO seeks to remedy its former Treasurer's failings.

The Treasurer also has a statutory duty to “[b]e responsible for receipts, disbursements and investments arising out of the operation of the school district under his supervision.” 105 ILCS 5/8-17(a)(9). These investments “*shall be* accounted for separately” and “the earnings from such investments *shall be* separately and individually computed and recorded, and credited” to the appropriate district. 105 ILCS 5/8-7 (emphasis supplied). Again, the Treasurer has an

obligation to properly allocate investment income. The TTO seeks correct the failings of its former Treasurer in this regard.

With respect to LT's failure to pay its proportionate share, Illinois law provides the amount of each district's proportionate share "*shall be determined*" by the Treasurer according to the statutory formula and each district "*shall pay*" that share. 105 ILCS 5/8-4 (emphasis added). Again, the TTO seeks to enforce mandatory, statutory obligations.

LT's argument that the TTO is not obligated to take action to correct the financial malfeasance of Robert Healy must be taken in the light of its recently filed Second Amended Counterclaim, wherein LT asserts a claim for *breach of fiduciary duty* against the TTO. (See Amend. Counterclaim, Exhibit 4, Count II.) On the one hand, LT instructs this Court that the Treasurer has a fiduciary duty to distribute the proceeds of a bond recovery; yet on the other hand LT apparently maintains that the Treasurer has no obligation to do so properly. In sum, the Treasurer has a duty to properly manage and account for *all* the monies in its custody – this necessarily has to mean it has a duty to act to rectify the failures of Robert Healy in performing these very functions.

The third factor – the extent to which the expenditure of public revenues is implicated – also supports that a public right being prosecuted. In *AC&S*, the Supreme Court noted that “defendants correctly point out that almost any time a governmental entity is involved there will be some fiscal impact.” 131 Ill. 2d at 476. Because of this, the Court explained the third factor must be given a “realistic application.” *Id.* The Court found that the extent of public revenues being implicated was sufficient to support a public right because “[w]e are not dealing with small sums of money; rather, the cost of these abatement projects will run into the millions.” *Id.* In total, the amount of improper benefits that flowed to LT as a result of Robert Healy's

wrongdoing is in excess of \$4.7 million. As in *AC&S*, the amounts at issue here “run into the millions.” This is not a small amount of money.

Against this backdrop, it is easy to see why LT’s emphasis on *Champaign County Forest Preserve District v. King*, 291 Ill. App. 3d 197 (4th Dist. 1997), is misplaced.⁴ In *King*, a single forest preserve district sued its insurance broker alleging it had been overcharged for insurance premiums. *Id.* at 199. The total amount of premium at issue was about \$20,000 per year over a seven-year period. *Id.*

The Appellate Court concluded that a “public right” was not at issue. First, the insurance did not directly affect or benefit the public, but rather only benefited the park district. *Id.* at 200-01. Second, the park district was not obligated to purchase the insurance. *Id.* at 201-02. Third, the total amount of money at issue was not stated, but presumably would have been around \$140,000. *Id.* at 202. Thus, the court concluded that the “plaintiff’s decision to purchase insurance can only be characterized as a corporate or business undertaking for its own benefit, rather than for the benefit of the general public.” *Id.*

The fact pattern in *King* does not fit this case. While the TTO is a single body politic, unlike the park district in *King* it functions as a trustee for 11 school districts and two other educational entities servicing tens of additional school districts. The Treasurer has an obligation to properly account for the monies in his or her custody. Robert Healy instead permitted LT to receive improper financial benefits. This necessarily worked to the detriment of the other school

⁴ LT also cites, without discussion, *Village of DePue v. Viacom International, Inc.*, 713 F. Supp. 2d 774 (N.D. Ill. 2010), in support of its argument that the TTO is not enforcing a public right. (Motion at 13.) Resort to federal interpretation of *Shelbyville* and *AC&S* is not necessary in this case. Regardless, the analysis there supports the TTO’s position. A village brought suit to recover damages it contends to have suffered as a result of environmental contamination. The court explained that no public right was implicated because the village had no obligation to remediate the site and the remediation would not involve village funds; rather, the site was privately owned and subject to a consent decree with the Illinois EPA. *Those* parties had an obligation to remediate the site, not the village.

districts. The Plaintiff as a body politic does not personally benefit in any fiscal sense whatsoever from this lawsuit. Moreover, unlike the modest amount at issue in *King*, the amount at issue here exceeds \$4.7 million. This lawsuit cannot be characterized as a “corporate or business undertaking for [the TTO’s] own benefit.”

3. Limitations Periods do Not Apply Because LT’s Liability is Based on Statute and Not on LT’s Own Conduct.

The third reason that a limitations period does not apply to this lawsuit is that “where the liability of the defendant is created, not merely by the act of the parties, but by the positive requirements of a statute, the plaintiff is not barred by the statute of limitations.” *Trustees of Schools v. Arnold*, 58 Ill. App. 103, 108-09 (4th Dist. 1895) (internal quotations omitted). Here, the TTO does not allege that LT is liable because it breached a contract or acted in a negligent manner, *i.e.*, it is not the *conduct* of LT that imposes the liability. Rather, the TTO alleges that LT’s liability is created by statute. LT asserts as a defense that a contract existed excusing some of its statutory obligations, but the TTO has not asserted a breach of contract.

4. LT’s Remaining Arguments do Not Affect This Court’s Analysis.

LT creates the red herring that the TTO contends it is generally not bound by a limitations period. (Motion at 15-17.) This is not true; the TTO only contends that a limitations period does not apply in this particular case due to the facts before this Court.

Further, neither case LT cites on page 16 of its Motion offers anything to the analysis. *Rusch v. Baer*, 18 F. Supp. 732 (N.D. Ill. 1937), did not involve a lawsuit by a public entity and, thus, is inapposite to this case. In *Trustees of School v. School Directors of Union District*, 88 Ill. 100 (1878), the statute of limitations was not raised as a defense. Moreover, neither case analyzed whether a “public right” or “private right” was at issue. They offer nothing to this Court’s analysis of whether or not a limitations period applies.

LT also spends several pages discussing missing records and unavailable witnesses. (Motion at 17-20.) But LT is not actually moving for summary judgment on the basis that the absence of any record or witness means the TTO cannot prove its case (*i.e.*, a Celotex-type motion for summary judgment). This argument is, accordingly, not relevant to the issue. The statute of limitations is not to be applied or excused based upon the evidentiary fluctuations in each case before this Court. Whether the passage of time hurts or helps one party is not relevant to statutory analysis.

Further, the TTO has adequate records to prove its case. The TTO attaches to its own Motion for Summary Judgment rather voluminous records that demonstrate just how much evidence there is and that evidence is sufficient for the TTO to prevail. For example, LT argues that various documents are missing that relate to the investment income analysis, ignoring that James Martin, the TTO's expert accounting witness, testified that "The documents I had were sufficient to complete my analysis." (Motion, Ex. 20 at 28:8-9.) LT has not moved to bar Mr. Martin's testimony or explained why the missing records were necessary for Mr. Martin's analysis. He testified at length that they were not necessary.

Notably, while LT argues it has been prejudiced by missing records or witnesses, LT does not argue that the purported contracts through which Robert Healy excused LT's statutory obligations have gone missing. Indeed, that is very point – those "contracts" never existed in the first instance. Had the parties actually entered into those "contracts," they would be available for this Court to review. It is LT's mad scramble to try to find evidence to support its position that has put LT in the position it now faces. Had LT followed Illinois law years ago, all of its current complaints would be moot. Regardless, LT's Motion should be denied.

IV. CONCLUSION

In accordance with the reasoning of the Illinois Supreme Court in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653, 656 (1883), and *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876), the limitations period does not apply because the Treasurer has at all times held the public funds in trust. Further, in accordance with the Supreme Court's reasoning in *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983), and *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989), the limitations period does not apply because the TTO seeks to assert a public right. Finally, in accordance with the reasoning of the Appellate Court in *Trustees of Schools v. Arnold*, 58 Ill. App. 103, 108-09 (4th Dist. 1895), the limitations period does not apply because LT's liability is created by statute and not by its own conduct.

WHEREFORE, for the reasons stated herein, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court deny the Motion for Partial Summary Judgment filed by Lyons Township High School District 204, along with providing such other relief as may be necessary or appropriate.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: 

One of its attorneys.

Gerald E. Kubasiak

kubasiak@millercanfield.com

Barry P. Kaltenbach

kaltenbach@millercanfield.com

Gretchen M. Kubasiak

kubasiakg@millercanfield.com

Miller, Canfield, Paddock & Stone, P.L.C.

225 West Washington, Suite 2600

Chicago, Illinois 60606

(312) 460-4200

Firm No. 44233

29349868.2\154483-00001

PROOF OF SERVICE

The undersigned, a non-attorney, certifies that a copy of the following document, **Plaintiff's Response to Defendant's Motion for Partial Summary Judgment**, has been served upon:

Jay R. Hoffman
Hoffman Legal
20 N. Clark Street, Suite 2500
Chicago, IL 60602
jay@hoffmanlegal.com

as follows:

X	by personal service on July 17, 2017 before 5:00 p.m.
	by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 225 W. Washington Street, Chicago, Illinois, on July 17, 2017 before 5:00 p.m.
	by facsimile transmission from 225 W. Washington Street, Suite 2600, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 460-4201, consisting of ____ pages on July 17, 2017 before 5:00 p.m., the served [party/parties] having consented to such service.
	by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on July 17, 2017 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
	by electronic mail, on July 17, 2017 before 5:00 p.m., the served [party/parties] having consented to such service.



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

EXHIBIT 1

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

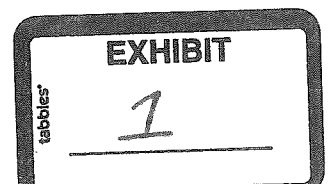
TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12)
EAST,)
) No. 13 CH 23386
Plaintiff,)
) Hon. Sophia H. Hall
vs.) Calendar 14
)
LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)
)
Defendant.)

VERIFIED AMENDED COMPLAINT FOR DECLARATORY RELIEF

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

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“Township Trustees”), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange Park, Cook County, Illinois.
2. Defendant, Lyons Township High School District No. 204 (“District 204”), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.
3. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.



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

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

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

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

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

separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

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

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

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

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

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

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

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

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

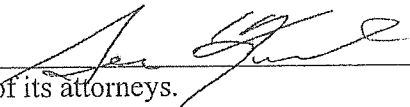
F. District 204 is obligated to pay \$511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that District 204 performed and that was paid by the Treasurer from the Treasurer's General Fund;

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

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

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: 
One of its attorneys.

Gerald E. Kubasiak

gkubasiak@kftrlaw.com

Barry P. Kaltenbach

bkaltenbach@kftrlaw.com

Gretchen M. Kubasiak

gmkubasiak@kftrlaw.com

KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.

20 South Clark Street, 29th Floor

Chicago, Illinois 60603

(312) 630-9600 (Phone)

(312) 630-7939 (Facsimile)

Firm No. 48237

Service by e-mail will be accepted.

VERIFICATION

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

Dated: 10-21-14

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

Michael Thiessen, on behalf of Plaintiff

EXHIBIT 2

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

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

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

No. 13 CH 23386

Hon. Sophia H. Hall

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

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

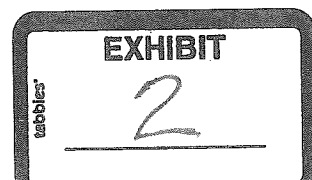
THE PARTIES, JURISDICTION AND VENUE

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

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

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

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



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

ANSWER: Admit.

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

ANSWER: Admit.

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: Deny.

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

ANSWER: Deny.

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

ANSWER: Deny.

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

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

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

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

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

40. Section 8-7 of the School Code further provides, "When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall be accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired."

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

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

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

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

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

ANSWER: Deny.

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

ANSWER: Deny.

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

ANSWER: Deny.

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

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

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

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

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

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

ANSWER: Deny.

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

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

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

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

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

ANSWER: Deny.

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

ANSWER: Deny.

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

ANSWER: Admit.

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

ANSWER: Admit.

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

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

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

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

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

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

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

ANSWER: Admit.

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

ANSWER: Deny.

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

ANSWER: Deny.

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

ANSWER: Deny.

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

ANSWER: Deny.

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

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

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

[Affirmative Defenses not included]

EXHIBIT 3

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

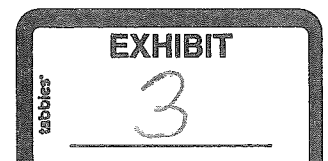
TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,)	
)	
Plaintiff,)	No. 13 CH 23386
)	
vs.)	Judge Sophia H. Hall
)	Calendar 14
LYONS TOWNSHIP HIGH SCHOOL)	
DISTRICT NO. 204,)	
)	
Defendants.)	
)	

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

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

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

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



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

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

4. I have certain statutory duties as Treasurer, including generally managing approximately \$500,000,000 each year in revenue and investments. With respect to my investments on behalf of the districts, at the close of the most recent fiscal, June 30, 2016, my office was holding and investing \$198,827,322; LT's share of this was \$41,764,445, or about 23.5%.

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

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

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

based upon my own personal knowledge and experience during the relevant time frame and from my review of countless business records.

8. From time to time, the Treasurer credits earnings on its investments to each member district. The Treasurer does so through a bookkeeping entry. The Treasurer does not issue a check to the districts for their share earnings. At all times, these funds remain in the custody of the Treasurer.

9. From time to time, member districts need to pay amounts to third-parties, such as vendors. When this is done, the school district prepares a check drawn on an account in its name and the Treasurer signs the check. When the vendor deposits the check and the funds leave the district's account, at that point the funds leave the custody of the Treasurer.

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

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

Susan Birkenmaier

7-12-2017

Susan Birkenmaier, Ed.D.

Date

EXHIBIT 4

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

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

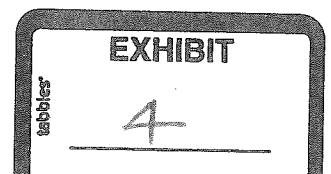
DEFENDANT AND COUNTER-PLAINTIFF LT'S FIRST AMENDED AFFIRMATIVE DEFENSES TO THE TTO'S FIRST AMENDED COMPLAINT, AND LT'S SECOND AMENDED COUNTERCLAIM (VERIFIED)

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT") asserts the following First Amended Affirmative Defenses to the First Amended Complaint of Plaintiff Township Trustees of Schools Township 38 North, Range 12 East ("the TTO"); and the following Second Amended Counterclaim.

**First Amended Affirmative Defenses
To First Amended Complaint**

Factual Background: Payments for LT's Business Functions

1. During the period of time relevant to this case, from 1992 through 2012, LT and the TTO had a difficult and, at times contentious, relationship. LT had little faith or trust in the competence and integrity of the TTO to perform its statutorily mandated functions. The TTO objected to providing meaningful information and supporting documentation to LT concerning the investment funds that the TTO managed, the expenses that the TTO incurred, and the many questions that LT and other member districts raised about the TTO's operations.



[Pages 2 through 23 not included]

WHEREFORE, LT respectfully asks this Court to enter judgment in its favor and against the TTO, deny the TTO any recovery under the First Amended Complaint, and award LT its costs of suit.

Second Amended 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 Trustees select a salaried Treasurer.

4. The Treasurer manages the TTO's office, supervises its support staff, and interfaces with the school districts that are members of the TTO.

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

6. The TTO holds the funds (received through taxes and other sources) belonging to LT and the other member school districts ("the Other Districts"). The TTO pools the funds of the member districts together and invests those funds on behalf of LT and the Other Districts.

7. During all relevant times through about August 2012, Robert Healy served as Treasurer of the TTO.

Count I: Setoff

8. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses and paragraphs 1-7 of the Counterclaim as set forth above.

9. In the First Amended Complaint, the TTO contends that LT did not pay in full the invoices that the TTO sent LT from 2000 to 2012 for LT's pro rata share of the TTO's expenses. Implicit in the First Amended Complaint is a refusal to acknowledge that the TTO and LT agreed in 2000, and reaffirmed in each subsequent year through 2012, that the TTO would pay the costs of LT's business functions and offset those costs against the pro rata invoices.

10. In its other pleadings in this case, the TTO has claimed that the parties' agreement on the payment of LT's business functions is illegal and unenforceable.

11. The TTO's position on this agreement is wrong. As detailed above, in 2000, the TTO and LT knowingly entered into a valid and binding written agreement, approved by both boards, in which the TTO agreed to pay the costs of LT's business expenses as set forth in the 2/29/2000 Memo (Exhibit B).

12. In each subsequent year from 2001 to 2012, the TTO and LT reaffirmed this agreement when LT presented the TTO with a written statement of the annual costs that it proposed the TTO would pay (Exhibit C). In each of those years, the TTO accepted those amounts, as well as LT's offset of those amounts against the annual pro rata expense invoice that the TTO provided to LT. The boards of both parties provided their consents to this arrangement.

13. In 2013, the TTO terminated this arrangement. LT does not contest the TTO's right to terminate in 2013 for 2013 fiscal year. LT does not assert any claims or seek any damages relating to the TTO's 2013 termination.

14. Under the circumstances of this case, LT is entitled to a setoff, in the amounts set forth in the memoranda attached as Exhibit A, which cover the years 2000 through 2012, against any claim of the TTO relating to the alleged non-payment of the TTO's pro rata expense invoices from 2000 to 2012.

15. In asserting this claim for setoff, LT does not seek any affirmative recovery of damages against the TTO.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count I, and award LT its costs of suit.

Count II: Breach of Fiduciary Duty

16. LT incorporates by reference the allegations in paragraphs 1-7 of the Counterclaim as set forth above.

17. During the relevant period, in accordance with state law requirements, the TTO purchased fidelity bonds that applied to Healy's service as Treasurer ("the Bonds").

18. Liberty Mutual Insurance Company and The Hanover Insurance Company (a/k/a Massachusetts Bay Insurance Company) issued the Bonds to the TTO.

19. Through their pro rata share payments of the TTO's expenditures, LT and the Other Districts paid the premiums on the Bonds.

20. After Healy resigned from the TTO in 2012, the TTO learned that Healy had stolen more than \$1 million through wrongful wire transfers of funds from the TTO's bank and through wrongful payments for sick and vacation days. This money that Healy stole was money that the TTO held in trust for LT and the Other Districts.

21. In 2013, the State of Illinois charged Healy with the crime of Theft in Excess of \$1 million, a Class X felony. Healy pled guilty and received a sentence of nine years in prison.

22. The TTO made claims on the Bonds. The TTO's claims alleged that Healy had stolen more than in excess of \$1 million through wrongful wire transfers of funds from TTO's bank and through wrongful payments for sick and vacation days.

23. The TTO recovered \$1,040,000 on its claims on the Bonds.

24. In an affidavit filed in this case and dated June 5, 2015, the current Treasurer of the TTO, Dr. Susan Birkenmaier, claimed that \$1,040,000 in recoveries on the Bonds “has been set aside while Township Trustees continue their efforts to recover additional sums.” Birkenmaier further claimed that the TTO can apply the \$1,040,000 recovery “to pay unrelated expenses of the Treasurer’s office”; that the TTO can “otherwise” use the money in an unspecified manner “in accordance with Illinois law”; and that the TTO has no obligation to allocate the recoveries on the Bonds amongst its member districts.

25. Since June 5, 2015, the TTO has not distributed to LT any of the recoveries on the Bonds, or explained why it has not made this distribution to LT.

26. The TTO serves as the fiscal agent of LT and the Other Districts with respect to its possession and investment of the funds of LT and the Other Districts, and as such, owes fiduciary duties to LT.

27. Among the purposes of the Bonds was to protect LT and the Other Districts from losing money as a result of theft by the Treasurer of the TTO.

28. The \$1,040,000 in recoveries on the Bonds is money that rightly belongs to LT and the Other Districts, and that must be used to compensate LT and the Other Districts for Healy’s theft of their funds.

29. LT’s share of the \$1,040,000 recoveries on the Bonds is determined by its pro rata ownership of the pooled investment fund at the time of the recoveries, which was approximately 25 percent.

30. Despite LT’s repeated demands to the TTO for payment of LT’s share of the recoveries on the Bonds, the TTO still has refused to make payment.

31. The TTO has no legal right, as the fiduciary agent of LT, to take LT's share of the recoveries on the Bonds and spend that money on expenses unrelated to the misconduct of Healy that gave rise to the claims on the Bonds.

32. The TTO's refusal to pay to LT its share of the recoveries on the Bonds is a breach of the TTO's fiduciary duties owed to LT. This breach directly and proximately caused injury to LT in the form of lost funds of about \$250,000.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count II; award LT compensatory damages in the amount of LT's rightful share of the \$1,040,000 payments on the Bonds; and award LT its costs of suit.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

By s/Jay R. Hoffman
Its Attorney

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