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DOROTHY BROWN
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2018CH08263

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

**LYONS TOWNSHIP TRUSTEES OF)
SCHOOLS, TOWNSHIP 38 NORTH,)
RANGE 12 EAST,)
)
) **Plaintiff,**)
)
) **vs.**)
)
**LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT 204,)
)
)
) **Defendant.**)****

**No. 18 CH 8263
Calendar 07
Judge Eve M. Reilly**

**PLAINTIFF’S REPLY IN SUPPORT OF ITS
MOTION TO STRIKE DEFENDANT’S AFFIRMATIVE DEFENSE**

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“Trustees”), by its undersigned counsel, THE QUINLAN LAW FIRM, LLC and MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for its Reply in Support of its Motion to Strike the Affirmative Defense filed by the Defendant, Lyons Township High School District 204 (“LT”), states as follows:

LT’s argument would result in this Court issuing a new rule of law affecting every public body in Illinois, and rewriting Section 8-4 of the School Code; and LT cites not a single case suggesting that either of these results are permissible, let alone wise.

As explained more fully in its Motion, plaintiff is a public body consisting of three elected trustees who appoint the Lyons Township School Treasurer. (See Compl., Ex. 1, ¶¶ 2, 7; see also 105 ILCS 5/5-2 and 105 ILCS 5/8-1. The Treasurer services multiple school districts within Lyons Township, including LT. (See Compl., Ex. 1, ¶¶8-9.) The Treasurer is compensated and the Treasurer has expenses of office. (See Compl., Ex. 1, ¶10; see also 105

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ILCS 5/8-4.) The Trustees, however, do not have a tax base to pay for these costs. (See Compl., Ex. 1, ¶15.) LT admits this point: “LT admits that the TTO does not have a tax base, and that it does not have any legitimate source of revenue other than payments received from the school districts.” (Answer, ¶ 15.)

Section 8-4 requires that each district “shall pay a proportionate share of the compensation of the township treasurer serving such district...and a proportionate share of the expenses of the treasurer’s office.” (See Compl., Ex. 1, ¶10; see also 105 ILCS 5/8-4.) LT admits this, too. (Answer, ¶ 10.) The formula for determining the proportionate share of each district is set forth in Section 8-4, requiring that the proportion:

shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belongs to each such elementary school district or high school district.

(See Compl., Ex. 1, ¶11; see also 105 ILCS 5/8-4.) LT also admits this. (Answer, ¶ 11.)

The conclusion is evident – if the Treasurer has an expense, each district has to pay its proportionate share of that expense. Section 8-4 does not contain any alternative methods of functioning. If the Treasurer has an expense of office, then each district “shall pay” its share of that expense in accordance with the formula. The district does not get to pick-and-choose what expenses it agrees with, or elect to pay for expenses only attributable to that district. Section 8-4 also does not permit the Treasurer to allocate its expenses among less than all the districts.

Each year the Treasurer send an invoice to each district for each district’s proportionate share. All of the other districts pay that invoice in full, except for LT. For Fiscal Years 2014 through 2017 (the years at issue in this lawsuit) LT paid some, but not all, of the invoices at issue. (See Compl., Ex. 1, ¶¶17-21.)

In its Response, LT argues that the expenses it refuses to pay are “improper,” and that the biggest expense is “millions of dollars in attorneys’ fees and expenses that the TTO has incurred in suing LT” in the first lawsuit. (Resp. at 1.)¹ Whether these legal fees are “improper” or not, however, is not at issue in the present Motion. LT’s concedes that for purposes of its Affirmative Defense *they* are proper, as noted at the top of the second page of its Response. LT’s theory is that even if they are an expense of the Treasurer’s office, the “American Rule” means that LT does not have to pay its share of that expense. (See also Resp. at 7 (“the American Rule takes precedence over Section 8-4.”))

This Court’s adoption of LT’s theory would produce a sweeping ramification most easily explained: imagine that the City of Chicago (or Cook County, or the State of Illinois, or any public body) is engaged in litigation against a taxpayer. When the time comes for the taxpayer to pay his or her taxes, the taxpayer objects that a portion of those taxes are being used to pay for the attorneys involved in the litigation against the taxpayer, and on the basis of the “American Rule” demands that the public body customize that tax bill to remove the taxpayer’s share of the attorneys’ fees. Adopting LT’s theory means that the taxpayer is correct.

This novel theory could extend into the private sector, too. If Comcast is engaged in litigation with a Comcast customer, does Comcast owe a credit to its customer for that customer’s share of the attorneys’ fees? If such a credit is not given, does this mean that Comcast is violating the “American Rule” by having the customer pay monies, some of which are used to fund ongoing litigation? True, the customer’s share might be very small, certainly less than the amounts at issue here, but the principle holds true.

¹ The Trustees’ filed this case to recover \$636,740.08 (not “millions”), but LT’s partial payments have reduced the amount in controversy to \$418,589.97. Of this, the legal expenses only total \$245,926.78, with the balance being mostly for computer software and hardware. As those items are not legal fees, LT’s “American Rule” argument is wholly inapplicable to them.

It is also true that this litigation is not being funded through the imposition of taxes – both parties agree that that the Trustees do not have a tax base and rely entirely upon the funds payable under Section 8-4. But this difference makes no distinction and the logic holds. Nor does it make a difference whether the legal fees are part of a line item on a tax bill or invoice, or included more generally. Put simply, the “American Rule” does not mean that a person is excused from paying the amounts owed to a public body merely because some of the amount owed goes towards litigation against that person. LT does not cite a case in support of its novel expansion of the “American Rule.”

LT attempts to find support for its position in *Village of Glenview v. Zwick*, 356 Ill. App. 3d 630 (1st Dist. 2005), but that case involves such a fundamentally different fact pattern that the difference is patent. In *Village of Glenview*, the Village enacted an ordinance providing that if the Village was the prevailing party in litigation regarding its municipal code, the Village could recover its attorneys’ fees from the other side. *Id.* at 632. The Appellate Court affirmed the trial court’s holding that the ordinance was an unlawful exercise of the Village’s home rule powers because a municipality cannot enact a fee-shifting ordinance that changes the “American Rule” and thereby places a chilling effect on persons who might wish to challenge a citation issued by the Village *Id.* at 640. This ordinance impermissibly hindered access to the court system, which was not a local concern, but a state-wide concern, and thus beyond the scope of home-rule authority. *Id.* at 640-41.

The Trustees did not enact an ordinance, or any measure, that resulted in fee shifting, and they certainly have not hindered LT’s access to the court system. Rather, the General Assembly (which is not burdened by home-rule concerns) enacted the School Code well over 100 years ago and Section 8-4 was around for decades before the parties began litigating. That Section 8-4 does

not mention fee shifting does not undercut the Trustees' argument. It is a neutral revenue measure directing that each district shall pay the expenses of the Treasurer's office. The resident in *Village of Glenview* was not arguing he did not have to pay the citation (or his taxes) because that money would go to the Village, a portion of which would be used to fund the litigation against him.

LT's argument would also require this Court to rewrite Section 8-4. Section 8-4 requires that each district "shall pay" for its proportionate share of the Treasurer's expenses of office. The proportion is determined by "dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belongs to each such elementary school district or high school district." 105 ILCS 5/8-4. Section 8-4 does not contain alternative language that provides that the Treasurer shall first deduct from its expenses those legal fees incurred in litigation with a member district, and then allocate those expenses solely among the districts not involved in the litigation. Section 8-4 instructs the Treasurer to (1) total his or her expenses, and (2) bill that amount to all districts in the proportion stated.

LT's Affirmative Defense asks this Court to rewrite this instruction so as to only bill the Treasurer's legal fees to those districts that benefit from the litigation. This is something LT expressly asks for in its Counterclaim. (See Counterclaim at ¶ 62(d), alleging the "TTO" is breaching a fiduciary duty by not "charging those [legal] fees solely to the Other Districts.") LT's theory would contradict the mandate of Section 8-4; and, respectfully, rewriting the statutory formula is something best left to the legislature. *See Prazen v. Shoop*, 2013 IL 115035, ¶ 38 ("It is the dominion of the legislature to enact laws and the courts to construe them, and we can neither restrict nor enlarge the meaning of an unambiguous statute.").

For these reasons, LT's Affirmative Defense has no place in this lawsuit and should be stricken.

Respectfully submitted,

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

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

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2019, I electronically filed **PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSE** with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/Barry P. Kaltenbach

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