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 Jerry A. Esrig
vs.	
	Commercial Calendar S
LYONS TOWNSHIP HIGH SCHOOL DISTRICT NO. 204	
Defendants.	

PLAINTIFF'S TRIAL BRIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Trustees"), by its undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, states as follows:

I. INTRODUCTION

A former Township Treasurer, Robert Healy, embezzled over $1 million in public funds, and permitted Lyons Township High School District No. 204 ("District 204" or "LT") to reap unlawful and unauthorized financial benefits in violation of the Illinois School Code and other aspects of Illinois law. This is the most inequitable result possible, because LT is the wealthiest district within Lyons Township, and so the School Code dictates LT pay the largest share of the Treasurer's compensation and expenses. Instead, LT accepted and is fighting to retain these benefits, to the direct corresponding detriment of all the other districts that the Trustees serve. There are three different categories of unlawful benefits that Healy afforded LT.

First, Section 8-4 of the School Code mandates that LT "shall pay" its proportionate share of the Treasurer's expenses of office. 105 ILCS 5/8-4. **It is undisputed that LT did not**

pay its proportionate share during Fiscal Years 2000 through 2019. In some years, LT made partial payments, and in other years LT paid nothing. The result is that the other districts will be forced to absorb LT's non-payments.

LT argues that it and the Trustees entered into a "contract" in 2000 that excused LT from paying its proportionate share. Even assuming this "contract" was validly entered into by the Boards of both parties (it was not) and complied with the Intergovernmental Cooperation Act (it did not), the "contract" still violated Section 8-4 of the School Code and is, therefore, unlawful and unenforceable. In actuality, no "contract" describes what LT actually did. Moreover, at best, it would have been effective for only Fiscal Year 2000, which is the date reflected on the face of the purported "contract" at issue. **LT concedes that this "contract" does not even have a theoretical possibility of being applicable for Fiscal Years 2013-2019. LT offers no legal excuse for not paying its proportionate share during these later years, other than LT disagrees with the Trustees' business judgment.**

Second, **it is also undisputed that the Treasurer paid for LT's audit and accounting expenses between 1993 and 2012.** By doing so, the Treasurer treated those expenses as if they were expenses of the Treasurer's office, which meant that LT's expenses were billed to all of the other districts. Of course, **LT's** expenses are not expenses of the **Treasurer's** office, and the other districts should not have had to pay for LT's expenses. The result is that the other districts paid for both their own accountants and their proportionate share of LT's accountants. This practice also violated the School Code because each district must pay for its own audit.

Third, in accordance with Section 8-7 of the School Code, 105 ILCS 5/8-7, and to minimize costs and expenses, the Treasurer pools the funds of the districts for investment purposes. When allocating income from the pooled investments during Fiscal Years 1995 through 2012, then-Treasurer Healy over-allocated investment income to LT. Because the amount of investment income is finite number, this means that other districts were under-allocated investment income.

The Trustees, therefore, seek a declaratory judgment authorizing the Treasurer to remedy these violations of Illinois law by making the book-keeping entries described herein. Absent this relief, the other districts will not only have unknowingly subsidized LT during the years at issue in this lawsuit, but they will have to absorb the financial impact of LT's non-payment of its bills going forward – after LT leaves the Township Trustees system of government. The less-wealthy districts within Lyons Township will again be stuck footing the bill for the wealthiest district.

LT asserts affirmative defenses and a counterclaim for breach of fiduciary duty. For the further reasons explained herein, LT's affirmative defenses are not an obstacle to the relief sought, and LT should not prevail on its counterclaim. The Trustees do not owe a fiduciary duty to LT in particular and the Trustees business decisions benefit Lyons Township as a whole and did not cause any financial harm to LT.

II. FACTUAL BACKGROUND

A. The Township Trustees.

The Trustees are a body politic comprised of the three Township Trustees of Schools who are elected by voters within Lyons Township. 105 ILCS 5/5-2. The School Code mandates that "the school business of all school townships having school trustees shall be transacted by [the] three trustees…." 105 ILCS 5/5-2. The Trustees also appoint the Lyons Township School Treasurer ("Treasurer"). 105 ILCS 5/8-1.

B. <u>The Treasurer</u>.

The Treasurer provides financial services for LT (*i.e.*, District 204), and twelve other districts: District 101 through 109; Argo Community High School District 217; the LaGrange Area Department of Special Education ("LADSE"); and West 40 Intermediate Service Center No. 2 ("West 40").

The Treasurer has certain statutory duties, including to: (i) "[c]ollect from the township and county collectors the full amount of taxes levied by the school boards in his township;" (ii) "[b]e responsible for the receipts, disbursements and investments arising out of the operation of the school districts under his supervision; and (iii) "[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); (a)(9). The Treasurer is the "only lawful custodian" of the funds belonging to each district. 105 ILCS 5/8-7.

How this generally works is that the Treasurer takes custody of the property taxes levied by each school district and then pools those funds. Some of these funds are kept in cash (so that bills can be readily paid) and other funds are placed in short and long-term investments, often certificates of deposit ("CDs") and bonds. The Treasurer typically refers to this pooled fund as the "Agency Fund." Each district has its own percentage share of the Agency Fund. As the investments produce income on a quarterly basis, that income (once realized) is allocated to each district through a journal entry within the Agency Fund. Any unrealized or unallocated investments remain within the Agency Fund, and each district continues to own its share of the Agency Fund. So at **all** times **all** of the pooled investments and income remain within the Agency Fund, of which each district has a share.

Pursuant to the School Code, the Treasurer also pays each district's bills as directed by those districts. The districts cannot sign their own checks – the Treasurer has signature power. So when a district needs to pay a bill, it directs the Treasurer to pay the bill and/or presents a check to the Treasurer for signature. The check is drawn on a local bank account set up by the Treasurer for the districts, and funds are transferred to that local bank account from the Agency Fund, in an amount sufficient to cover the checks. At all times, however, the funds at issue remain within the custody of the Treasurer.

C. <u>How the Expenses of the Treasurer's Office Are Paid</u>.

The Treasurer is compensated and the Treasurer has expenses of office. Neither the Trustees nor the Treasurer, however, have a tax base or receive independent State funding. Accordingly, during the fiscal year (which begins on July 1 and runs through the following June 30),[1] the Treasurer utilizes funds from within the Agency Fund to pay his bills. From an accounting standpoint this is reflected as an advance from the Agency Fund. This creates an unallocated deficit in the Agency Fund, because the Treasurer has debited the Agency Fund to temporarily cover his expenses.

At the conclusion of each fiscal year, the Treasurer sends each district a bill for that district's proportionate share of the Treasurer's expenses. (This bill is commonly called the "pro-rata bill" or pro-rata invoice.") 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 (emphasis added). 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.* This means that districts are **not** billed according to their use of the Treasurer's services. Rather, the wealthier districts are billed for a greater percentage of the Treasurer's expenses, a uniquely equitable framework. LT is the wealthiest district, a fortuitous by-product of assessed property tax revenue, and so LT's bill is higher than the other districts,

[1] For example, Fiscal Year 2019 is the year beginning on July 1, 2018, and ending on June 30, 2019.

even though LT has chosen to replicate many of the Treasurer's services with LT's own employees. But this does not matter when calculating LT's pro-rata bill under Illinois law.

Assuming each district pays its pro-rata bill in full, the process balances; the unallocated deficit in the Agency Fund is erased once each district pays. But what happens if a district, such as LT, does not pay its bill?

If a district does not pay its pro-rata bill, then the unallocated deficit in the Agency Fund continues to exist as a deficit on the funds therein, **because the Treasurer has already spent the money shown on the pro-rata bill**. Since the Trustees and Treasurer do not have their own source of funds, they cannot "make up" the shortfall. The shortfall remains within the Agency Fund, and each member owns a percentage share of the Agency Fund. This means, absent declaratory relief, the other districts will ultimately have to absorb their share of LT's non-payment. Every single theory that LT advances to justify its actions and position overlooks two **inescapable facts**: (1) the Treasurer does not have his own money, so if the Treasurer pays for something, that is just another way of say all of the districts are paying for it; and (2) if LT does not pay its pro-rata bill, then the unpaid amount remains a deficit in the Agency Fund, eventually to be borne by all the districts, absent judicial relief.

There is, however, a compounding effect to LT's non-payment. When a district pays a bill (any bill), that district draws on its funds within the Agency Fund; so each bill paid leaves a district with a little bit less in the Agency Fund. But LT does not pay its pro-rata bill, so LT does not suffer this result. By not paying its bills, LT has kept an inflated balance within the Agency Fund. This means that LT ends up owning an inflated percentage of the Agency Fund, and correspondingly an inflated ownership of the investments within the Agency Fund. LT's non-payment just leads to further riches and yet more allocated income for LT.

D. <u>Robert Healy's Misconduct</u>.

Robert Healy was the Treasurer from July 1988 through August 2012. Towards the end of his tenure, Healy redeemed a significant amount of allegedly unused vacation days. The Trustees engaged counsel to investigate whether this was appropriate. This led to the discovery that Healy had embezzled over $1 million. Ultimately, the Trustees turned their findings over to the Cook County State's Attorney, who successfully prosecuted Healy. Healy was sentenced to nine years in prison.

The Trustees also investigated whether Baker Tilly, who audited the Treasurer's office, was negligent in failing to discover the embezzlement; this, in turn, lead to the discovery that Healy had conferred unlawful and unauthorized financial benefits upon LT. In October 2013, just over one year after Healy resigned, the Trustees filed this action against LT.

III. CLAIM 1 – LT'S FAILURE TO PAY ITS ANNUAL PRO-RATA BILLS

Section 8-4 of the School Code mandates that each district "**shall pay**" its pro-rata share of the Treasurer's expenses. 105 ILCS 5/8-4. After the close of each fiscal year, the Treasurer totals the amount he spent, and sends a pro-rata bill to each district. **It is undisputed that LT did not pay its full pro-rata share for Fiscal Years 2000 through 2019.** For Fiscal Years 2000 through 2012, LT argues that it entered into a "contract" with the Trustees that meant LT did not have to pay its pro-rata bill. For Fiscal Years 2013 through 2019, LT agrees that this "contract" would not be operative, but LT still refuses to pay its pro-rata bills for these years because LT disagrees with the Trustees' business judgment when incurring expenses.

A. <u>LT's Non-Payment Violates Section 8-4</u>.

Section 8-4 requires LT to pay its pro-rata bill, and LT did not pay. The issue is as simple as that; LT's non-payment during each of the fiscal years in question violated Section 8-4. LT admits that the requirements of Section 8-4 is mandatory and not optional.

B. <u>No "Contract" Can Override Section 8-4</u>.

For Fiscal Years 2000 through 2012, LT argues that it entered into a "contract" that functionally excused LT from paying its pro-rata bill.[2] The purported "contract" is a one-page memorandum drafted by LT in which LT "proposed" that the Treasurer would pay for certain of LT's employees. (Plaintiff's Trial Exhibit 24(D).) In essence, LT argues that it was duplicating the Treasurer's services with its own employees, and so it was agreed that the Treasurer's office would pay for those employees. (Of course, this means that those payments should have been treated as an expense of the Treasurer's office, and each district should have been billed its pro-rata share of those payments – but this never happened.)

The **result**, whatever might have been intended, was that Healy sent the annual pro-rata bills to LT, and LT did not pay. Instead, LT reduced the total amount it was billed by the amounts it was paying certain of its employees. As explained above, this created an inherent problem, because the amounts in the annual pro-rata bill had already been spent. Whatever else LT might have intended, the outcome was that LT did not pay its pro-rata share of the Treasurer's expenses, in violation of Section 8-4.

Any purported "contract" that resulted in LT not paying its pro-rata share violates Section 8-4 and is, therefore, void; a public body cannot enter into a contract that "is *ultra vires*, contrary to statutes, or contrary to public policy." *Matthews v. CTA*, 2016 IL 117638, ¶ 98; *see also City*

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[2] LT's witnesses offered disjointed testimony on whether there even was a contract. LT may well maintain at trial that there was not a contract, but rather some sort of nebulous, non-contractual agreement or understanding.

of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7, 2020 IL 124831, ¶ 43 ("this court has long held that when a conflict exists between a contract provision and state law…state law prevails.").

For Fiscal Years 2013 through 2019, LT concedes this alleged "contract" would not apply – so for those years, LT decided it would not pay the pro-rata bill in full, and instead made partial payments, refusing to pay for expenses with which it disagreed. But this also violates Section 8-4. LT cannot pick-and-choose what it is willing to pay for, or decide it will not pay for services it chooses to duplicate; LT "**shall pay**" its pro-rata share.

C. Any "Contract" Required a Formal Intergovernmental Agreement.

LT's witnesses have described the "contract" as being no different than the Treasurer "outsourcing" services to LT, or the two parties "sharing" services. In essence, LT has argued it should be treated akin to a vendor who was providing business services to the Treasurer. This attempt at justifying the "contract" leads to a violation of the Intergovernmental Cooperation Act, 5 ILCS 220. If one governmental body is a "vendor" to another governmental body, the mandates of the Intergovernmental Cooperation Act are triggered.

Section 3 of the Intergovernmental Cooperation Act provides that one public body may "exercise[], combine[], transfer[], and enjoy[]" its powers with another public body. 5 ILCS 220/3. Under LT's theory, that is what happened, *i.e.*, one public body performed work for another public body. But Section 5 of the Act imposes certain requirements upon such contracts.

Section 5 permits intergovernmental agreements, "provided that such contract shall be approved by the governing bodies of each party to the contract…." 5 ILCS 220/5. Section 5 also provides that "[s]uch contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties." 5 ILCS 220/5. The one-page, unsigned "proposal" from LT does not satisfy Section 5. It does not state the purpose or objectives of the parties, nor their rights, powers or other responsibilities. Moreover, what LT actually did is not what the "proposal" describes. Finally, there is no evidence the Trustees considered or voted upon any "proposal" beyond the single March 2000 meeting where the Trustees reviewed the "proposal" that was clearly identified as being for the "99-00" year.

There **is not** a written document that describes what actually happened and there is no writing that shows a meeting of the minds. LT's proposal was that Healy would pay for certain of LT's employees, but it is undisputed this never happened; nor do the records reflect he ever booked a credit. Moreover, year after year, LT unilaterally changed the terms of its "proposal" by escalating the costs it was "proposing" Healy would pay.

A formal intergovernmental agreement was necessary. In *Village of Montgomery v. Aurora Township*, 387 Ill. App. 3d 353, 354 (2nd Dist. 2008), the Village of Montgomery sought a declaratory judgment respecting which public body had the obligation to maintain a bridge. Aurora Township argued that either Montgomery or the City of Aurora had informally agreed to assume that obligation. The Appellate Court explained:

> [a]lthough the record contains intergovernmental agreements reflecting that during certain years, [the City of] Aurora agreed to plow and salt the bridge on behalf of the Township, neither Aurora nor Montgomery ever executed a formal agreement to take over maintenance responsibility for the bridge.

Id. at 358. Accordingly, lacking a proper intergovernmental agreement to transfer maintenance, the Township retained the obligation for maintenance of the bridge. *Id*.

Similarly, in *Connelly v. Clark County*, 16 Ill. App. 3d 947 (4th Dist. 1973), decided even before the Intergovernmental Cooperation Act was codified, the Appellate Court addressed whether Clark County was permitted to operate a gravel pit and sell gravel to other public bodies. The court concluded that although Clark County *could* have entered into an agreement with other public bodies, no such intergovernmental agreement existed. *Id*. at 951. Accordingly, while Clark County could operate the gravel pit for its own needs, it *could not sell excess gravel to other public bodies*, absent a formal intergovernmental agreement. *Id*. at 952.

D. **If There Was an "Contract," It Was Effective Only For FY 2000.**

LT was the wealthiest district and, therefore, had the largest pro-rata bill. For years, LT did not like the fact that its wealth meant it had to pay more, especially since LT chose to maintain its own business office. LT argues it maintained its own business office because it was not satisfied with Healy, but this is beside the point. LT was akin to parents who send their children to private schools being unhappy paying that portion of their taxes supporting public schools; the monies are owed whether they use the services or not. Regardless of the reason, beginning in 1999, LT's then-business manager (Lisa Beckwith) sought to alleviate LT's unhappiness. The end-result was a February 29, 2000 memorandum that Beckwith sent to Healy. In the memorandum, Beckwith states the relevant "proposal" thus:

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest and student activities.
- Annual salary and benefit costs for 3 employees as listed below:

	Salary 99-00	OASDI Medicare	IMRF	Insurance Medical	Insurance Life	Total
Programmer Analyst	$41,205	$3,152	$3,045		$48	$47,450
Accounts Payable Bkkeeper	$23,192	$1.774	$1,714	$7,028	$48	$33,756
Payroll Bookkeeper	$21,861	$1,672	$1,616		$48	$25,197
Total	**$86,258**	**$6,598**	**$6,375**	**$7,028**	**$144**	**$106,403**

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the fiscal year.

(Plaintiff's Trial Exhibit 24(D).)

LT argues that the Trustees voted to "accept" this "proposal" during a March 21, 2000 Board meeting, thereby forming the "contract" with LT. Even if this were true, on its face, the proposal was for "99-00." Nothing in the memorandum suggests it was to be applicable on a perpetual basis. At best, the Trustees voted on a single-year proposal. **And the Trustees subsequent meeting minutes are clear that neither this proposal, nor any other similar proposal, was ever again considered or voted upon by the Trustees.**

Moreover, Illinois law states that a public board cannot enter into contracts for employment or services lasting longer than the period for which the board making the decision has left to serve. *Cannizzo v. Berwyn Twp. 708 Cmty. Mental Health Bd.*, 318 Ill. App. 3d 478, 482-87 (1st Dist. 2000). Such contracts are "*ultra vires* and void *ab initio*." *Id.* at 487.

Here, the governing body of the Plaintiff consists of 3 elected Trustees. 105 ILCS 5/5-2. One trustee is elected every 2 years to serve a 6-year term, with elections occurring in odd-numbered years. 105 ILCS 5/5-4; 5-13; 5-14. LT's theory is that the "contract" was agreed to by the Trustees in March 2000 and by LT in June 2000 (discussed below). A new Board of Trustees would then have been created in 2001 with the next election, and would have needed to vote on the next LT "proposal."

LT also argues that that even if the meeting minutes are clear that the Trustees never again considered or voted upon any subsequent annual proposal, the Trustees nevertheless reviewed future financial report showing that LT was not paying its pro-rata share, and so the Trustees must have implicitly agreed to a new "contract" every year. First, this is not accurate; no further minutes contain a report showing that LT was not paying its pro-rata share. Second, the Trustees can only be bound through official action of its Board, and the meeting minutes are clear that the Board never again took any action (let alone official action) on any subsequent proposal. *See Matthews*, 2016 IL 117638 at ¶99 (a public body may only be contractually bound by official action taken by its governing Board).

E. <u>The Trustees Did Not Vote to Enter Into the "Contract" With LT</u>.

The above "proposal" was discussed at the Trustees March 21, 2000 Board meeting. The minutes reflect the following:

> Healy submitted to the Trustees the proposal from District 204 stating this office absorb certain payroll, accounts payable and computer processing expenditures by District 204. As these costs would be incurred by the Treasurer's office if Lyons Township High School were to totally utilize the facilities of the Treasurer's office. These costs would certainly be incurred. A point to be clarified is to make sure that workman's compensation is covered. A further recommendation by Trustee Hartigan is that the trustees be given an evaluation of the employee's performance for those aforementioned personnel employed at the high school.

(Plaintiff's Trial Exhibit 13, p. 2.)

The minutes then reflect the following action:

A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the Lyons Township Trustees of Schools by Cook County High School District #204.
ROLL CALL: Ayes - Joseph Nekola, Russell Hartigan
Nays - None

(Plaintiff's Trial Exhibit 13, p. 3.) (Only two of the three trustees were present for this meeting.)

LT argues that by voting to "accept" the proposal, the Trustees formally agreed to enter into the "contract" with LT. This is wrong; the Board was acknowledging its formal receipt of the proposal. A review of nearly two decades of meeting minutes reveals that the Trustees had a custom of "accepting" documents when receiving them into the record; whereas the Trustees had a custom of voting to "approve" contracts. Nancy Sylvester, an expert parliamentarian, will offer her opinion that it is common for boards to vote to "accept" documents into their official record. She will also offer her opinion that, after reviewing the Trustees meeting minutes, the Trustees custom was to "approve" contracts and "accept" documents. The Trustees did not enter into contracts by "accepting" proposals.

LT will attempt to introduce testimony of two witnesses, Robert Healy and Russell Hartigan, on this vote; but, this evidence would be improper, aside from the fact that the former is a convicted felon the Trustees helped convict and the former has testified he remembers nothing. Testimony of witnesses as to what happened at a board meeting is not admissible. The official records of the Trustees are all that may be considered for this purpose. *See Bellwood v. Galt*, 321 Ill. 504, 508 (1926) ("When a record of [a public body's] proceedings is required to be kept the record is the only lawful evidence of its action, and it cannot be contradicted or added to by parol."); *accord Schroeder v. Cmty. Unit Sch. Dist. No. 2 of Macoupin Cty.*, 75 Ill. App. 2d 352, 357 (4th Dist. 1966) ("it has long been held that where official bodies are required to keep a record of their proceedings, the only proper evidence of the proceedings of such bodies is the official record of their acts.”). *See also Otey v. Westerman*, 276 Ill. App. 395, 401-02 (4th Dist. 1934) (holding it is “well settled” that official records are “the best, and if in existence and capable of being produced, the only evidence” of official acts and proceedings).

Illinois law requires that the Trustees keep an official record of their proceedings. *See* 105 ILCS 5/8-1(a) (imposing upon the Treasurer that “[h]e shall attend all meetings and keep a record of the official proceedings of the trustees of schools.”); *see also* Illinois Open Meetings Act, 5 ILCS 120/2.06(a) (“All public bodies shall keep written minutes of all their meetings….”). Because the Trustees were required to – and did – keep official records of their proceedings, only those official records may be considered in determining the actions of the Trustees.

LT will also seek to present testimony that Healy **told them** that the Trustees agreed to the proposal, both in March 2000 and in subsequent years. But this is hearsay and, as discussed above, Healy’s description of what happened at subsequent Board meetings is not proper evidence – only the official records of the Trustees may be considered and those records unequivocally show that the Trustees never again considered or voted upon any similar proposal.

Likewise, it is clear that Healy did not have actual authority to bind the Trustees. All township business must be conducted by the Trustees, not the Treasurer. 105 ILCS 5/5-2. While the School Code authorizes the Treasurer to enter into certain types of contracts, none of them are of the type at issue. See 105 ILCS 5/8-7. Under the School Code, only the Trustees could have approved the “contract” with LT, and nothing Healy told LT can alter that fact. *See also Matthews*, 2016 IL 117638 at ¶ 99 (holding a public body may only be contractually bound by official action taken by its governing Board); *Lindahl v. City of Des Plaines*, 210 Ill. App. 3d 281, 296 (1st Dist. 1991) (holding a city supervisor did not have authority to enter into contract and the plaintiff was charged with having that knowledge).

For these same reasons, Healy did not have apparent authority to bind the Trustees, as the doctrine is not applicable against public officials. *Lindahl*, 210 Ill. App. 3d at 296*; Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶¶ 35-36. This is because: (a) it would leave a public body "helpless to correct errors;" or (b) "escape the financial effects of frauds and thefts by unscrupulous public servants;" and (c) persons acting with a public official are charged with knowing the bounds of his or her authority, even if the official is himself unsure. *Id*. Moreover, LT employees will concede that they knew that Healy was not authorized to enter into the purported contract.

F. <u>Not Even LT's Board Voted to Approve the "Contract"</u>.

The LT Board of Education met on June 19, 2000. Its agenda, minutes and relevant attachments are Plaintiff's Trial Exhibit 24(G). The minutes reveal the Board voted to "approve the Consent Agenda…." (*Id*., pp. 9-13.) The Consent Agenda identifies "Exhibit T" as the "Township Treasurer's Invoice." (*Id*.) Consent Agenda Exhibit T includes a memorandum from Beckwith to the LT Board, stating that the "Board of Education action is to approve a payment…." (*Id*. at p. 17.) That is precisely what the Board did – it paid a single invoice. The minutes do not reflect that the LT Board voted to enter into a contract.

LT's position, however, is that its Board's vote approving payment and the vote approving the "contract" were the same vote. In other words, by voting to approve a payment, the Board was also voting to approve an implied contract that would result in the payment being due. But that is not what the actual vote was; LT's Board never voted to approve a contract with the Trustees. Nancy Sylvester, the Trustees' expert parliamentarian, will again offer her testimony that based solely on her review of the official LT Board records, LT did not vote to enter into a contract with the Trustees.

LT may attempt to introduce evidence from one or more of its Board members that the Board intended to enter into a contract with the Trustees, but for the reasons discussed above, such evidence may not be considered.

After Fiscal Year 2000, and continuing through Fiscal Year 2012, LT kept increasing the amounts it was "proposing" Healy would pay, by sending a new "proposal" each year to Healy, until eventually these amounts vastly exceeded the LT's pro-rata bill; at which point LT stopped paying even a portion of its pro-rata bill. The minutes are clear that the Trustees never again considered or voted upon any of these further "proposals" that LT sent to Healy.

G. The Pro-Rata Bill for Fiscal Years 2013 Through 2019.

LT's failure to pay its pro-rata bills for Fiscal Years 2013 through 2019 has nothing to with any of the above. LT concedes that the purported "contract" would not have been in effect beginning in Fiscal Year 2013. (This is because when the Trustees became aware of Healy's wrongdoings, and LT's theory about having entered into the "contract," the Trustees told LT that to the extent the "contract" ever did exist it should be considered terminated.)

The excuse that LT offers for not paying its pro-rata bills for Fiscal Years 2013 through 2019 is that LT disagrees with the Trustees' discretionary business-judgment decisions to pay for things like drinking water, financial software and attorneys. Most respectfully, neither this Court nor LT has authority to second-guess the discretionary business decisions of the Trustees.

While this Court has the authority to issue relief to control "the discretionary actions of public officials," this is only where "fraud, corruption, oppression or gross injustice is shown…." *Board of Educ. of Niles Twp. High Sch. Dist. No. 219 v. Board of Educ. of Northfield Twp. High Sch. Dist. No. 225*, 112 Ill. App. 3d 212, 219 (1st Dist. 1983); *see also Rocke v. Cook County*, 60 Ill. App. 3d 874, 875-76 (1st Dist. 1978) (holding the official acts of public officers may be corrected where they have acted "arbitrarily and capriciously" and thereby abused their discretion); *Boyden v. Dep't of Pub. Works & Bldgs.*, 349 Ill. 363, 381 (1932) (ruling, in a declaratory judgment action, that "[w]hen public officers are vested with discretionary power, a court of equity will not interfere to control such discretion unless fraud, corruption, oppression, or gross injustice is shown" and "it must clearly appear from the evidence that there has been an abuse of discretion and an oppressive exercise of power…[i]t is not enough that there should be a difference of opinion between the court and the officer of the [public body].").

The primary objections LT has made to paying its share of the Trustees' legal fees is that they are not expenses of the Treasurer's office, because the Trustees (not the Treasurer), are the ones bringing this suit. The Treasurer, however, would not have been the proper party to bring this lawsuit. *Lynn v. Trustees of Schools*, 271 Ill. App. 3d 539, 543 (4th Dist. 1933); *see also* 105 ILCS 5/5-2 (authorizing the Trustees to bring lawsuits). The Trustees bring this lawsuit seeking to authorize the Treasurer to take certain actions because the Treasurer cannot bring this suit.

LT also complains about various other expenses well within the Trustees' discretion, such as the financial software the Treasurer utilizes. Making a decision about what software to purchase is the quintessential business judgment, to which courts routinely defer, absent some evidence of fraud or wrongdoing. LT likewise complained about the short-term engagement of a public relations firm to help with the media attention generated as a result of Healy's wrongdoing. This was likewise, indisputably, within the business judgment of the Trustees. *See Ryan v. Warren Township High School Dist.*, 155 Ill. App. 3d 203, 205 (2d Dist. 1987) (holding a school district had authority to employ a public relations firm as a result of the district's obligation to hold public meetings because the firm might "enhance the school district's communications with the public") *Id*. at 205. The Trustees are similarly required to disseminate information to the community and to hold public meetings. 5 ILCS 120/1 *et seq*.

Any doubts about the reasonableness of these particular charges should be eradicated by the fact that all of the other districts have paid their pro-rata bills in full, year after year. Evidence that these bills were paid is "prima facie evidence that the charge was reasonable." ***People v. Coleman***, 2014 IL App (5th) 110274, ¶ 156; ILL. R. EVID. 803(24).

In total, for the period Fiscal Year 2000 through Fiscal Year 2019, LT failed to pay $3,289,247.93 in pro-rata billings. During this period, each other district paid its pro-rata bill in full. The year-by-year breakdown is summarized in Plaintiff's Trial Exhibit 75(C), a copy of which is attached hereto. The Trustees request that the Treasurer be authorized to debit this amount from LT's balance held within the Agency Fund, which was approximately $43 million as of the period ending June 30, 2020.

IV. CLAIM 2 – HEALY WRONGLY PAID FOR LT'S ANNUAL AUDITS AND OTHER ACCOUNTING EXPENSES

Section 8-4 of the School Code requires the Treasurer to bill each district for its pro-rata share of the Treasurer's expenses. The Treasurer is not authorized to pay the individualized expenses of a particular district and then include that expense as an expense of his office, to be billed on a pro-rata basis to all the districts. Yet during the period 1993-2012 that is precisely what Healy did – he paid for LT's accounting and audit expenses, without the Trustees having a complete and accurate picture of what Healy was doing. This violated Section 8-4.

Further, Healy's payment of LT's audit expenses violates Section 3-7. The School Code mandates that "[e]ach school district shall, as of June 30 of each year, cause an audit of its accounts to be made…." 105 ILCS 5/3-7. Thereafter, each district "shall…submit an original and one copy of such audit to the regional superintendent of schools…." *Id*. If any district does not cause an audit to be made, the superintendent "shall…cause such audit to be made by employing an accountant…to conduct such audit and shall bill the district for such services…." *Id*. Reading these sentences together, Section 3-7 requires that each district pay for its own audit.

Courts should interpret statutory provisions as a whole and not focus on phrases in isolation. *People v. Glisson*, 202 Ill. 2d 499, 505 (2002). This Court may also assume that the legislature did not intend an absurd result. *Id*. Section 3-7 of the School Code requires that each district "shall cause" its own audit to be made. While not expressly identifying who should pay, the logical inference is that each district pays for its own audit, because that district is the one "causing" the audit to be undertaken.

If a district does not cause its audit to be undertaken, the regional superintendent "shall cause" the audit to be done, and then "shall bill" the district for the cost. This reinforces the conclusion that the cost of the audit is for the district to bear. Any other conclusion would create the absurd result wherein the district is **not** responsible for the cost of its audit if the district causes it, but **is** responsible for the cost if the district does not cause it.

Yet it is undisputed that from 1993 through 2012, Healy paid for LT's audit and accounting expenses and treated them as an expense of the Treasurer's office. It is also clear that during this time period, with just a few exceptions, every other district paid for its own audit and accounting services. This means that: (a) LT did not pay for its own audit and accounting expenses, because LT's expenses were included on the pro-rata bills that LT did not pay; and (b) every other district paid for its own audit and accounting expenses **and** its pro-rata share of LT's expenses. The other districts were subsidizing LT.

LT has a few counter-arguments, but none of them changes the fact that LT's non-payment violated Sections 8-4 and 3-7. First, LT argues that in reality, Healy paid not just for

LT's audits, but for the audits of all of the other districts, and so LT did not get special treatment. Healy might even testify that this is true, although the business records establish otherwise. Regardless, this just means Healy's conduct was even more egregious.

Second, LT argues that because it was the biggest (and wealthiest) district, it performed many of its own business services, and so its audit was more complex and it was proper for Healy to pay for LT's audit. This is nonsensical. Remember that the Treasurer does not have his own funds, so the Treasurer "paying for" LT's audit just means the cost get billed to all the districts on a pro-rata basis. If LT's audit was more complex because LT chose to operate its own business office, all the more reason for **LT** to bear that cost. As the largest district, LT likely had greater electrical costs than the other districts – but that is not a good reason for Healy to have paid LT's electrical bill.

Finally, LT argues that some of the charges at issue are not audit fees, but rather are costs for other accounting services that LT obtained from its auditors. While non-audit accounting costs are not implicated by Section 3-7, it would nonetheless be improper under Section 8-4 for the Treasurer to have paid them and then billed them on a pro-rata basis to each district.

In total, between 1993 and 2012, Healy paid $550,566.62 for LT's audit and accounting expenses. These payments are detailed in Plaintiff's Trial Exhibit 53(B) and 53(C) (copies of which are attached hereto). Trial Exhibit 53(B) sets forth $511,068.60 in expenses and represents the amount alleged to be at-issue in the Second Amended Complaint. Trial Exhibit 53(C) sets forth a further $39,498.02 that was identified after that pleading was filed, based upon a further review of documents produced many years earlier.

The Trustees request that the Treasurer be authorized to debit these amounts from LT's approximately $43 million balance in the Agency Fund. The Trustees acknowledge if they prevail on both their “pro-rata” claim and their “audit fees” claim that this would result in a partially-overlapping recovery (because if LT had paid its pro-rata bill, LT would have paid its pro-rata share of its own audit fees). The Trustees propose to calculate this credit by multiplying each invoice reflected on Trial Exhibits 53(B) and 53(C) by LT’s pro-rata share for the corresponding fiscal year, which such shares are reflected on Trial Exhibits: 19(C), p. 2; 20(C), p. 2; 21(C), p. 29; 22(C), p. 28; 23(D), p. 4; 24(E), p. 2; 25(F), p. 2; 26(E), p. 2; 27(E), p. 2; 28(E), p. 2; 29(D), p. 2; 30(D), p. 2; 31(D), p. 2; 32(D), p. 2; 33(D), p. 2; 34(D), p. 2; 35(E), p. 2; 36(E), p. 2; and 37(E), p. 2. The Trustees will calculate and submit their proposed credit, to the dollar, in post-trial submissions based on the evidence at trial.

V. CLAIM 3 – HEALY OVER-ALLOCATED INVESTMENT INCOME TO LT

As discussed above, the Treasurer takes custody of each district’s property taxes, pools those funds in the Agency Fund, and then invests them. Each district has a share of the pooled Agency Fund. If these investments realize income, the Treasurer allocates that income on a percentage basis as well. During Healy’s tenure (and currently), the allocations were done on a quarterly basis, through a journal entry. Healy did not actually “pay” any district, *i.e.*, issue a check or wire funds – he just made a journal entry entry within the Agency Fund reflecting the income allocations.

The problem is that when allocating investment income to LT during Fiscal Years 1995 through 2012, Healy sometimes allocated LT more that LT’s percentage share of the income being allocated. James Martin, an expert financial witness, will testify that the net result was that Healy over-allocated $1,427,442.04 to LT. This necessarily means the other districts were under-allocated this same amount.

A. **<u>The School Code's Requirements</u>.**

Section 8-7 of the School Code authorizes the Treasurer to pool the tax dollars he collects and invest them for the benefit of the districts. Section 8-7 also requires the Treasurer to allocate the investment income earned on the pooled funds among the districts. Necessarily, Section 8-7 does not permit the Treasurer to misallocate the funds in his custody.

B. **<u>Healy's Allocation of Investment Income</u>.**

Each district has a share of the Agency Fund (imagine slices of pie in a pie chart). Each district's slice of the pie is further subdivided into various purposed "funds" (*e.g.*, education fund, transportation fund, debt-service fund). The Treasurer maintains a general ledger for each district and its funds are, for accounting purposes only, "placed" into these various purposed funds.

Healy invested the money in the Agency Fund. If the investments realized income, Healy allocated this income to the districts. Each month, Healy took a computer report of the separate purposed "fund" balances for each district. He totaled these balances to arrive at a "total fund balance" for each district. He then calculated an average total fund balance per quarter. The total fund balance for all the districts became the denominator, and the total fund balance for each individual district became the numerator, in an equation to determine the allocation percentages, *i.e.*, the percentages into which the income-allocation pie would be split.

Healy then estimated how much income could actually be allocated. Healy did not allocate all of the income; the income to be allocated was a conservative estimate of the income that would be available for allocation. Some investment income was always retained by the Treasurer and kept within the Agency Fund. Then Healy allocated the income to each district by making a journal entry in that district's general ledger reflecting that each district was being allocated a certain amount of income.

C. <u>Healy's Over-Allocation of Income to LT</u>.

Healy resigned in August 2012, when his misconduct was beginning to come to light. An accountant within the Treasurer's office, Kelly Bradshaw, reviewed some of Healy's work. Her rough calculations ultimately led to the engagement of James Martin, an expert financial witness. Mr. Martin reviewed the Treasurer's business records independently and will opine that in some quarters Healy over-allocated income to LT, and in some quarters Healy under-allocated income to LT, but that the net result was that that LT was over-allocated $1,427,442.04. His opinion is based on comparing Healy's calculation of each district's fund balances (to determine the income allocation percentage) with the allocation percentages Healy actually used.

D. <u>LT's Argument to the Contrary Are Unavailing</u>.

LT has its own expert witness, Martin Terpstra. LT argues that the total amount of investment income earned during Fiscal Years 1995 through 2012 cannot be determined with certainly, because of incomplete records from that time period. Both Martin and Terpstra agree with this statement. On this basis, LT argues that it cannot be said that LT was over-allocated income, because the total income earned is not known. This is, however, a red herring. There is no dispute that **at the time the allocations were actually being made**, Healy allocated more income to LT than LT's percentage share of the amounts being allocated. Knowledge of the total amount of income earned is not necessary to determine that LT was over-allocated income.

A simple example illustrates this issue. First, assume that LT's share of the total fund balance was twenty-five percent, meaning that LT should receive one-quarter of the income being allocated. Then, assume in a given quarter, Healy allocated $100,000 to LT and $200,000 to the other districts combined, for a total allocation of $300,000. This means that LT would have received one-third of the amount allocated ($100,000), instead of the one-quarter of the amount allocated ($75,000). The result is that LT was over-allocated $25,000.

LT's theory is that no one can say that LT was over-allocated income, because the total amount of income actually earned cannot be known. What if, for example, the actual income earned that quarter was $400,000, but for some reason Healy only allocated $300,000? In that scenario, LT argues, it would have been allocated the proper amount (one-quarter) of the total income that was earned.

The problem with LT's theory is that in order for it to work, the hypothetical $100,000 that was **not** allocated must both (i) actually exist and (ii) never be allocated to LT in the future, because LT would have already received its one-quarter share of that $100,000. So either LT was over-allocated income during Healy's tenure, or LT was given an advance on future allocations and there was an amount of income remaining within the Agency Fund that should have been allocated **only** to the other districts. But LT was included in all future allocation, so this hypothetical advance is not what happened.

By 2013, a new Board of Trustees had been elected, a new Treasurer had been appointed who was no longer over-allocating income to LT, and a new accounting firm had been engaged to audit the Treasurer's office. The audit for Fiscal Year 2012 (performed by the previous accounting firm) had identified $793,968 as "Undistributed investment income." (Plaintiff's Trial Exhibit 79(A), p. 13.) In November 2013, the Treasurer then allocated $500,000 among the districts, **including LT**. Problematically, it turned out that this entire amount was **unrealized** income; it existed only on paper. These means that LT's theory falls flat; as November 2013 there was not a secret $1,427,442.04 of realized income remaining unallocated in the Agency Fund and, regardless, LT was never left out of any future allocations.

LT's does not dispute that James Martin's analysis was otherwise accurate with respect to the amounts actually allocated to LT, excepting three specific calculations that Mr. Martin made. Ignoring these three entries results in an over-allocation of $1,386,267.03, rather than the $1,427,442.04 the Trustees claim, or a difference of about three percent.

In total, during Fiscal Year 1995 through Fiscal Year 2012, Healy over-allocated $1,427,442.04 in income to LT. These allocations by fiscal year, and their net effect, are summarized on the first page of Plaintiff's Trial Exhibit 54(B), p. 1 (a copy of which is attached). The Trustees request that the Treasurer be authorized to debit this amount from the approximately $43 million LT holds in the Agency Fund, and then reallocate this amount among all the districts (including LT), according to each district's percentage share of income as of the quarter of the allocation.

VI. PRE-JUDGMENT INTEREST

There has been an inequitable compounding effect caused by the benefits Healy afforded LT. Every time LT failed to pay a pro-rata bill, the unpaid amount remained allocated to LT within the Agency Fund. LT's percentage ownership of the Agency Fund has been artificially inflated by its refusal to pay its pro-rata bills. In essence, instead of paying its pro-rata bill, LT reinvested the amount it did not pay. This has caused LT to take a bigger and bigger piece of the future-income-allocations pie.

To remedy this, the Trustees request that prejudgment interest be assessed against LT, to be determined at the rate of five-percent per year against each unpaid pro-rata bill, commencing sixty days after the date of each pro-rata bill as set forth on Plaintiff's Trial Exhibit 75(C). The

Illinois Interest Act provides that prejudgment interest shall be assessed on amounts that "become due on any bond, bill, promissory note, or other instrument of writing; on money lent or advanced for the use of another; [and] on money withheld by an unreasonable and vexatious delay of payment." 815 ILCS 205/2. The amounts at issue are plainly stated on the face of each pro-rata bill, and this Act is read into every complaint as a matter of law. *Kansas Quality Construction, Inc. v. Chiasson*, 112 Ill. App. 2d 277, 288 (4th Dist 1969).

Following this same logic, the Trustees request that prejudgment be assessed against LT based on the amount of investment income over-allocated to LT. Each over-allocation meant that LT's percentage of the Agency Fund became over inflated. General equitable considerations warrant prejudgment interest where necessary; "[t]he current trend being employed to accomplish this goal is to allow an award of interest on funds owing so that justice might be accomplished in each particular case." *In re Estate of Wernick*, 127 Ill. 2d 61, 86-87 (1989). "[T]he amount of interest allowed need not fall within any precise terms." *Id.*at 87. Although declaratory judgment actions are "neither legal nor equitable actions, [they] have characteristics of both types of actions." *Berk v. County of Will*, 34 Ill. 2d 588, 591 (1966). Accordingly, following the "current trend," the Trustees submit that this Court may assess prejudgment interest on the investment income over-allocations. There is not a statutory rate of pre-judgment interest to be assessed based upon general equitable considerations, but the Trustees suggest the same five-percent rate as found in the Interest Act, commencing after each annual over-allocation summarized on Plaintiff's Trial Exhibit 54(B), p. 1.

VII LT's AFFIRMATIVE DEFENSES

LT has four surviving affirmative defenses, (a) laches, (b), statute of limitations, (c) voluntary payment doctrine, and (d) its theory of setoff. LT has the burden of proof on each of these affirmative defenses. *Pascal P. Paddock, Inc. v. Glennon*, 32 Ill. 2d 51, 54 (1964).

A. <u>First Affirmative Defense: *Laches*</u>.

"There is considerable reluctance to impose the doctrine of *laches* to actions of public entities unless unusual or extraordinary circumstances are shown." *Van Milligan v. Board of Fire & Police Comm'rs*, 158 Ill. 2d 85, 90 (1994). This is because "*laches* may impair the functioning of the [public body] in the discharge of its government functions, and valuable public interests may be jeopardized or lost by negligence, mistakes, or inattention of public officials." *Id.*; *accord Wabash County v. IMRF*, 408 Ill. App. 3d 924, 936 (2d Dist. 2011) ("the doctrine should not be imposed on a government entity absent extraordinary circumstances, because the public would be adversely affected.").

This rationale applies to the facts of this case. Healy afforded LT financial benefits in violation of the School Code, and these benefits directly hurt all of the other districts. Once Healy's malfeasance came to light in August 2012, the Trustees promptly investigated the matter, reached out to LT to attempt to resolve the dispute without a lawsuit, and then filed suit in October 2013. Even assuming the former Board was lax in their failure to watch over Healy, this is the kind of "negligence, mistakes, or inattention of public officials" that demonstrates *laches* should not be applied to this case.

It is not enough for LT to argue that prior Boards *should have* been aware of Healy's wrongdoing. If prior Boards did not have full knowledge of all of the relevant facts, then any delay in bringing suit is of no consequence, and such delay would not justify imposing *laches*.

See Getto v City of Chicago, 86 Ill. 2d 39, 53 (1981) ("[a]s we consider that the plaintiff did not have knowledge of all the facts necessary…laches is not applicable."). Moreover, there is no evidence that the other districts were aware that LT was receiving improper financial benefits, and they are the ones who were injured.

LT must also prove it suffered prejudice beyond the mere passage of time, and beyond merely having to return the financial benefits that LT should not have received in the first instance. LT cannot show such prejudice. LT had its own business office before entering into the purported "contract" and LT did not hire any new employees as a result of that "contract." Nor did LT terminate any of its employees after the "contract" was formally disavowed following Fiscal Year 2012. Likewise, LT was statutorily required to undergo an annual audit every year, and so its argument that it would have hired different auditors if Healy had stopped paying for its audit expenses. At best, LT can hypothesize that maybe it would have saved some money by using different auditors, although LT expressed satisfaction with the firm it was using. As to the over-allocation of investment income, LT has no argument of prejudice, other than it will lose the use of funds it never should have received in the first instance. Generalized claims of prejudice or speculation that something might have been done different are not sufficient to carry LT's burden. *See Van Milligan*, 158 Ill. 2d at 90-93 (speculating that a party "*might*" have taken certain actions is insufficient to prove that the party was, in fact, harmed by the lapse of time) (emphasis in original).

These concepts are exemplified by *Gersch v. Illinois Dept. of Professional Regulation*, 308 Ill. App. 3d 649, (1st Dist.. 1999). The plaintiff applied to the IDPR for a clinical social worker license, for which he was not qualified. *Id*. at 653-54. The IDPR issued the license and five years later realized its mistake and revoked the license. *Id*. The plaintiff, who had not misrepresented his qualifications, argued that *laches* barred the IDPR from revoking his license. *Id*. at 660-61. The Appellate Court held that *laches* was not a viable theory. *Id*.

Recognizing the "considerable reluctance" to impose laches to the actions of public entities, the court was not troubled by the fact that the plaintiff had not misrepresented his qualification – meaning the IDPR had full knowledge of the facts for years – or that the plaintiff had seemingly acted in good faith. The court explained, "we find no compelling circumstances which would warrant the imposition of laches here. For five years, plaintiff was the recipient of a benefit, the higher-tier license, to which he was not entitled." *Id*. at 661. Similarly, here, LT was the recipient of benefits to which it was not entitled; and similarly, LT has not carried its burden.

B. <u>Second Affirmative Defense: Statute of Limitations</u>.

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

1. <u>The Trustees Are Enforcing a "Public Right"</u>.

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

In *Shelbyville*, a single political entity (the City of Shelbyville) sued a homebuilder for its failure, 13 year earlier, to abide by an annexation agreement and construct certain roadways. 96

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

Here, the Trustees are a single body politic, but unlike the City of Shelbyville, this suit is effectively for the benefit of the other districts in Lyons Township. Those districts, not the Trustees or the Treasurer, stand to benefit. Certainly, the Treasurer is not charged with building and maintaining streets; but this does not distinguish this case from *Shelbyville*. The Treasurer is charged with managing the public funds of the districts, and those districts are charged with educating roughly 20,000 students in their care. Reallocating the millions of public funds at issue permits the other districts to use that money to fulfill their obligation to provide public school education. This is enforcing a "public right" as much as in *Shelbyville*.

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

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

With respect to the **first factor**, LT has argued that this is merely a private lawsuit between two governmental bodies, but this overlooks the undisputed fact that the millions of dollars at issue will be allocated amongst the other districts should the Trustees prevail. Because the Trustees and the Treasurer do not have their own funds, they cannot "make up" the harm caused by LT's retention of unlawful and improper financial benefits. The monies at issue will flow directly to the other districts and benefit them as they discharge their obligation to provide for the public school education of Lyons Township students.

With respect to the **second factor**, LT has previously argued that the School Code did not *require* the Trustees to file this lawsuit. The issue, however, is not whether state law obligates a *lawsuit*, but rather whether state law obligates the problem be addressed. In neither *Shelbyville* nor *A C & S* did the statutes at issue require the political bodies file a lawsuit. Rather, it imposed upon them an obligation to take actions (repairing roads and remediating asbestos), and the public bodies filed suit to recoup the funds at issue in those actions.

The Treasurer also has statutory obligations. The Treasurer is "the only lawful custodian of all school funds…and *shall* demand receipt for and safely keep" those funds. 105 ILCS 5/8-7. The Treasurer also has a statutory duty to "[b]e responsible for receipts, disbursements and investments arising out of the operation of the school district under his supervision." 105 ILCS

5/8-17(a)(9). If the public funds in the Treasurer's care were not accounted for properly, then the Trustees have an obligation to act to remedy that accounting.

LT's argument that the Trustees are not obligated to take action must be taken in the light of LT's claim for breach of fiduciary duty. If the Trustees owe LT a fiduciary duty, then the Trustees also owe a fiduciary duty to the other districts, requiring the Trustees to take action to avoid benefitting one district to the detriment of the others.

With respect to the **third factor**, in *A C & S* the Supreme Court noted that "defendants correctly point out that almost any time a governmental entity is involved there will be some fiscal impact." 131 Ill. 2d at 476. Because of this, the Court explained the third factor must be given a "realistic application." *Id*. The Court found that the extent of public revenues being implicated in that case 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*. As in *A C & S,* the amounts at issue here also "run into the millions."

All three factors discussed above establish that the Trustees are enforcing a "public right" as defined by the Supreme Court. In prior briefing, LT has depended upon an Appellate Court decision that it mistakenly believes supports its position: *Champaign County Forest Preserve District v. King*, 291 Ill. App. 3d 197 (4th Dist. 1997). This case, however, illustrates why the Trustees are correct. 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 (*i.e*., about $140,000 total). *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 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*.

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

2. **<u>The Public Funds at Issue Are Held in Trust</u>.**

Illinois law provides that school treasurers hold the funds in their care in trust, and as to those funds, no statute of limitations may be asserted. In *Trustees of Schools v. Arnold*, 58 Ill. App. 103 (4th Dist. 1895), certain trustees of schools filed suit against a school treasurer alleging he mishandled public funds in his care over the preceding 24 years. *Id*. at 104. The school treasurer asserted the statute of limitations as a defense. The Appellate Court rejected this because "as to any school funds in the hands of the treasurer, the plea of the statute of limitations were not well pleaded …." *Id*. at 108-10.

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

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

Id. at 656.

In making its ruling, the Court distinguished the relationship between the two school districts, as opposed to their relationship with the township treasurer, stating "[t]here was no proper trust relationship between [District No. 5] and [District No. 1]," describing the litigation between the school districts as merely a "personal suit…." *Id.*

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

Likewise, the limitations period was held not applicable in *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876). In that case, pursuant to statute, Logan County collected and held certain tax monies for the benefit of the City of Lincoln. *Id*. at 158-59. The City brought suit to collect the monies that should have been paid to it. *Id*. Logan County asserted the limitations period as a defense. *Id*. The Illinois Supreme Court rejected this defense, holding that because Logan County had a lawful obligation to hold the funds for the City, the City's claims were not subject to the limitations period. *Id*. at 158. Here, because the Treasurer holds all of the public funds at issue in trust for all the districts, no limitations period is applicable so long as those public funds remained in the hands of the Treasurer.

With respect to LT's failure to pay its pro-rata bill, it is undisputed that the funds remain in the Treasurer's hands, because LT has never directed those funds to be paid in the first instance. With respect over-allocated investment income, such income is not "paid" to any District, *i.e.*, the Treasurer does not issue a check or wire funds. Rather, the Treasurer only makes a journal entry reflecting that the income has been credited to each District. The funds being remain in the Treasurer's hands within the pooled Agency Fund.

With respect to the audit and accounting expenses, if the Trustees were suing the accountant, the case might be analogous to *School Directors*, because payments made to the accountant are no longer being held by the Treasurer. But the Trustees are not suing the accountant and, in any event, Healy did not pay the accountant as the result of a lawful voucher or payment order submitted by LT. Rather, Healy treated those costs as an expense of his office, and paid the accountant without instruction from LT. LT **should have** paid by using LT's funds, but LT did not, and so the funds actually at issue remain within the Agency Account.

Because the Trustees are both enforcing a "public right" within the meaning of Supreme Court precedent, and because the funds in question were held by the Treasurer and not paid to LT or paid on LT's orders, no statutory limitations period is applicable to this case.

3. Application of a Limitations Period.

The parties agree that, **if** a statutory limitations period applies, it would be the five year "catchall" limitations period set forth in 735 ILCS 5/13-205; but they **disagree** over how this period is to be applied. The Trustees filed suit on October 16, 2013 and so claims accruing prior to October 15, 2008 would be barred. The Trustees concede that this would eliminate their claim that LT was over-allocated investment income, because those over-allocations occurred prior to October 15, 2008.

With respect to LT's failure to pay its pro-rata bills, the limitations period would permit claims for the Fiscal Year 2008 pro-rata bill and onward. The pro-rata bill for Fiscal Year 2008 contained the Treasurer's expenses for the period commencing July 1, 2007 and ending June 30, 2008. The pro-rata bill, however, was not sent to LT in the ordinary course of business until June 9, 2009. (Plaintiff's Trial Exhibit 33(D).) (Before the pro-rata bill can be sent, the Treasurer needs to total his expenses and determine each district's pro-rata share, which requires waiting until all necessary audits are complete.) It was LT's failure to pay this bill that gives rise to the Trustees' claims – if LT had paid it then the Trustees would not have a viable claim in this Court.

LT disagrees and argues that the statutory limitations begins running as of the date the Treasurer incurs each individual expense, rather than on the date LT fails to pay its bill, relying on *Reimers v. Honda Motor Co.*, 150 Ill. App. 3d 840 (1st Dist. 1986). There, a minor was involved in a car accident and sustained personal injuries. His parents, who paid his medical bills, sought recovery only to find themselves barred by the statute of limitations. The court held the parents' cause of action accrued when the underlying accident occurred, since their claim was a "derivative" cause of action from their son's claim, within the scope of 735 ILCS 5/13-203. This case is just not applicable.

The general rule is that "[a] cause of action must have existence before it can be barred." *Aetna Life & Cas. Co. v. Sal E. Lobianco & Son Co.*, 43 Ill. App. 3d 765, 767 (2d Dist. 1976). It is only when "the forces wrongfully put in motion produces injury," that a cause of action accrues in the first instance. *Id*. at 768. Here, the "wrongful forces" are LT's non-payment of the pro-rata bills. Until LT declines to pay, the Trustees would have no cause of action for LT's failure to pay, as no injury would have been suffered.

For the audit and accounting expenses, the Trustees maintain that the "wrongful forces" were LT's failures to pay its applicable pro-rata bills on which the expenses were included, not the date the expense was paid by Healy in the first instance, which is LT's position.

C. **Third Affirmative Defense: Voluntary Payment Doctrine**.

A basic principle of law is that where a person receives funds to which he had no legal right, equity and good conscience dictates that the funds must be returned. *Bd. of Ed. of City of Chicago v. Holt*, 41 Ill. App. 3d 625, 626 (1st Dist. 1976). Some cases apply the "voluntary payment doctrine" as an exception to this principle, permitting a party to keep monies paid under a claim of right, so long as the party making payment had complete knowledge of the facts.

The doctrine is little more than a form of estoppel, and the Supreme Court has explained that estoppel "will not be applied to governmental entities absent extraordinary and compelling circumstances." *Matthews*, 2016 IL 117638 at ¶ 94. Further, estoppel may not be applied against a public body through the unauthorized acts of a public official. *Patrick Eng'g*, 2012 IL 113148 at ¶ 39. Perhaps for these reasons, courts in Illinois have a history of permitting public bodies to recover public funds to which the recipient did not have a legal right. *See, e.g.*, *City of Chicago v. McKechney*, 205 Ill. 375, 434-35 (1903) (permitting city to recover overpayment under contract); *City of Chicago v. Weir*, 165 Ill. 582, 590-91 (1897) (same); *Deford-Goff v. Dept. of Pub. Aid*, 281 Ill. App. 3d 888, 892 (4th Dist. 1996) (permitting department to pursue overpayment); *Holt*, 41 Ill. App. 3d at 627 (permitting board of education to recover salary paid to retired teacher); *see also Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 482, 493 (1994) (commenting without concern on the holding of *Holt*).

Courts in other jurisdictions have likewise permitted a public body to recover funds that were unlawfully paid to a recipient, regardless of the application of the doctrine. *See, e.g.*, *U.S. v.*

Wurts, 303 U.S. 414, 415 (1938) (permitting recovery where a public official "wrongfully, erroneously, or illegally" paid public monies); *U.S. v. Lahey Clinic Hosp., Inc.*, 399 F.3d 1, 15 (1st Cir. 2005) ("government has broad power to recover monies wrongfully paid"); *Harrold v. Glickman*, 206 F.3d 783, 789 (8th Cir. 2000) ("common law permits the government to recover funds that its agents wrongfully or erroneously paid"); *Old. Rep. Ins. Co. v. Fed. Crop. Ins. Corp.*, 947 F.2d 269, 275 (7th Cir. 1991) (government has "common law right to recover improperly paid funds"); *U.S. v. Dekalb Cnty.*, 729 F.2d 738, 741 n.4 (11th Cir. 1984) ("voluntary payment of public money made my public officers under no mistake of fact is not the equivalent in law of such payment by an individual"); *DiSilvestro v. U.S.*, 405 F.2d 150, 155 (2d Cir. 1968) ("It is, of course, well established that parties receiving monies from the Government under a mistake of fact or law are liable *ex aequo et bono* to refund them…."); *Heidt v. U.S.*, 56 F.2d 559, 560 (5th Cir. 1932) (declining to apply doctrine even where the unlawful payments continue for an extended period of time); *State ex rel. Zoeller v. Aisin USA Mfg., Inc.*, 946 N.E.2d 1148, 1157 (Ind. 2011) (recouping public funds is handled differently than recouping private funds); *State ex rel. Callaway v. Axtell*, 393 P.2d 451, 454 (N.M. 1964) (doctrine "is subject to an exception where public monies are involved"); *Arkansas Real Estate Co. v. Arkansas State Hwy. Comm'n*, 371 S.W.2d 1, 3 (Ark. 1963) ("that rule – of inability to recover a voluntary payment – does not apply to the State and its agencies."); *State ex rel. Jarrell v. Walker*, 117 S.E.2d 509, 512 (W. Va. 1960) ("there is a generally recognized exception to the [doctrine] where payment is made by a public officer"); *City of St. Louis v. Whitley*, 283 S.W.2d 490, 492 (Mo. 1955) ("case is not governed by the general rules applicable to the conduct and transactions of private individuals" as it involves "public officials entrusted with the expenditure of public funds”); *Township of Normania v. Yellow Medicine Cnty.*, 286 N.W. 881, 883 (Minn. 1939) (doctrine “has no application to unauthorized payment of public funds”).

This Court should decline to apply the doctrine to this case. Regardless, however, the doctrine is not invoked under the facts presented. This is because the Trustees at the time did not have all of the applicable facts and/or LT did not receive any payment under a claim of right to such payment.

In *Holt*, for example, a teacher resigned and “the public agency’s records reveal notice of resignation was properly accepted.” 41 Ill. App. 3d at 626. The Board of Education nonetheless authorized payment of the teacher’s salary, and later sought to recoup the payment, claiming it had made a mistake. The teacher argued that there was not a mistake of fact, because her resignation has been properly accepted, knowledge chargeable to the Board. Nonetheless, the court concluded the Board could recoup the payment because “the fact the person to whom the money was paid under a mistake of fact was not guilty of deceit or unfairness, and acted in good faith, does not prevent recovery of the sum paid, nor does the negligence of the payor preclude recovery.” *Id*. *See also Nickum*, 159 Ill. 2d at 473-74 (permitting recovery of payments made “based on incorrect and incomplete information regarding the circumstances….”).

It is apparent that this doctrine is not applicable on the facts, for multiple reasons. With respect to Healy’s over-allocation of investment income to LT, such allocations were not made under a “claim of right” by LT to any particular allocation. Further, Healy never actually paid LT, but merely made an internal bookkeeping entry reflecting the new balances in the pooled Agency Fund. There is also no record that the Trustees (as opposed to Healy) had full knowledge that Healy was over-allocating investment income to LT.

With respect to LT's non-payment of its pro-rata bills, once again, no payment was ever made to LT. The "proposal" that LT sent to Healy certainly **proposed** that the Trustees would make payment to LT, but that is not what actually happened – rather, Healy just permitted LT to **not** pay the pro-rata bills, and the records do not even reflect a credit on LT's account. With respect to the audit and accounting expenses, while payments were made to LT's accountants, they were not made to LT, and the accounting firm is not the party raising the defense. Moreover, as to both, and as with the over-allocation of interest, there is no indication in the records that the Trustees had full knowledge of the pertinent facts, even if they might have been aware at some general level as to what Healy was doing.

To the extent that LT argues that the Trustees *should have been* aware of all of the pertinent facts, or *should have* more closely monitored Healy, such an argument falls. *See Nickum*, 159 Ill. 2d at 473-74 (permitting recovery of payments made "based on incorrect and incomplete information regarding the circumstances…."); *Holt*, 41 Ill. App. 3d at 626 ("nor does the negligence of the payor preclude recovery."). What matters is what the Trustees **actually knew**, not what they could have or should have known. For all of these reasons, the doctrine is not applicable to the Trustees' claims, and not applicable under the facts of this case.

D. Fifth Affirmative Defense: LT's Theory of Setoff.[3]

This affirmative defense, which LT labels as a setoff, is really just another attempt to enforce the "contract" LT asserts it entered into with the Trustees in March 2000. LT seeks a credit for the amount it **proposed** the Trustees would pay LT each year – despite the facts that (a) the Trustees did not enter into a contract with LT, (b) there is no record the Trustees ever again considered or voted on any similar "proposal" for any other year, and (c) any such

[3] This Court struck LT's Fourth Affirmative Defense and held that Count I of LT's Consolidated Counterclaim, which alleged a setoff, would procedurally be viewed as LT's Fifth Affirmative Defense without the need for LT to formally replead it as such.

"contract" would have been unlawful. For all the reasons discussed above that "contract" is unenforceable and void under Illinois law. Further, LT concedes that the purported "contract" would only apply for Fiscal Years 2000 through 2012.

VIII. LT'S COUNTERCLAIM FOR BREACH OF FIDUCIARY DUTY

LT's filed a three-count Counterclaim (for procedural reasons, LT entitled its pleading as its "Consolidated Counterclaim") of which Count II, alleging breach of fiduciary duty, remains. LT has the burden of proving (a) that the Trustees owed a fiduciary duty to LT, (b) the Trustees breached such fiduciary duty, and (c) actual damage proximately caused by that breach. *Lutkauskas v. Ricker*, 2013 IL App (1st), ¶ 35; *In re Estate of Bontkowski*, 337 Ill. App. 3d 72, 78 (1st Dist. 2003).

A. <u>The Trustees Do Not Owe a Fiduciary Duty to LT</u>.

The Trustees do not owe a fiduciary duty **to LT**. To the extent this Court determines that the Trustees *do* owe a fiduciary duty to LT, however, the Trustees would thereby owe this same duty to *all* of the districts. The evidence is that the Trustees used their discretion to make business decisions for the best interests of the districts as a whole.

The Trustees are a body politic elected by and responsible to the voters of Lyons Township as a whole – not just the subset of voters that elects LT's Board of Education. The Trustees have a greater responsibility than just making business decisions with an eye towards what is best for LT. The Trustees (as a body politic) is the only party other than LT in this lawsuit. Accordingly, when LT asserts in its Consolidated Counterclaim that the "TTO" owes it a fiduciary duty, LT is necessarily arguing that the elected body politic owes it a fiduciary duty.

In drafting the School Code, the General Assembly imposed certain statutory, ministerial duties upon the Trustees. LT has not argued that the Trustees have violated any ministerial duties. The Trustees, like all elected officials, have to make non-ministerial (*i.e.*, discretionary) decisions, which includes making decisions on how to handle the financial business of the districts who educate the children of the voters who elected them. LT's Consolidated Counterclaim focuses on this discretionary decision-making.

The discretionary decisions of public officials, however, are subject to judicial review only where "fraud, corruption, oppression or gross injustice is shown…." *Board of Educ. v. Board of Educ.*, 112 Ill. App. 3d 212, 219 (1st Dist. 1983). *See also MacGregor v. Miller*, 324 Ill. 113, 118 (1926) (citing *Marbury v. Madison*, 5 U.S. 137 (1803) ("so careful are the court of encroaching in any manner upon the discretionary powers of public officials that, if any reasonable doubt exists as to the question of discretion or want of discretion, they will hesitate to interfere, preferring rather to extend the benefit of the doubt in favor of the officer."); *People ex rel. Hamer v. Board of Educ. of School Dist. No. 113*, 22 Ill. app. 3d 130, 134 (2d Dist. 1974) ("the management of district funds and reserves is a matter left largely to the discretion of school boards.") (Similar to a school board, the Trustees are charged with managing the funds and financial affairs for the business of their township, see *Lynn*, 271 Ill. App. 3d at 546-47.) This principle is similar to the business judgment rule, which provides that courts should not substitute their own judgment for the business decisions of corporate directors, absent bad faith, fraud, illegality or gross overreaching. *Stamp v. Touche Ross & Co.*, 263 Ill. App. 3d 1010, 1015-16 (1st Dist. 1993).

The Trustees certainly concede they owe statutory duties. For example, Section 8-5 of the School Code instructs the Treasurer how to maintain his financial accounts, including that he keep them "in the manner directed by the State Board of Education, the regional superintendent of schools or the trustees of schools…." 105 ILCS 5/8-5. Section 8-6 instructs the Treasurer to "keep in a cash book separate cash balances…and extend the balances and the aggregate cash balance for all funds balance at least monthly." 105 ILCS 5/8-6. These are statutory duties, however, not fiduciary duties, and the specific ways that the Treasurer implements these duties are, and should be, left to the discretion of the body politic.

B. <u>The Trustees Did Not Breach Any Duty, or Cause Damage to LT</u>.

LT takes issue with five specific decisions the Trustees have made during the past seven years. First, after discovering Healy's embezzlement, the Trustees made claims upon Healy's fiduciary bonds, and recovered $1,040,000. This $1,040,000, paid to the Trustees as obligee, was applied to reduce the expenses of the Treasurer's office, which meant the districts were saved this same amount in annual pro-rata billings. The financial net effect to the districts is the same – except for LT, because LT was refusing to pay its annual pro-rata bills in the first instance. This application was explained, in writing, to the districts, and only LT has claimed that this process was improper.

Second, LT asserts that, beginning with Fiscal Year 2014, when the Treasurer allocates income on a quarterly basis, the Treasurer does not allocate every penny of income at the time he performs allocations. LT does not argue that the School Code dictates the minutiae of *when* income is to allocated, or that the Trustees cannot engage in a prudent business practice of allocating less than every penny on a quarterly basis (even if LT disagrees with the practice). In reality, the Treasurer allocates less than every penny primarily to avoid the problem of over-allocating income and then having to tell the districts they have fewer funds than they thought.

Moreover, the fact that the Treasurer is conservative with his allocations has not damaged LT (or any other district). All unallocated income remains within the Agency Fund, which each district owns in a percentage share, and is subject to reinvestment and future allocations. The unallocated funds do not "go" anywhere and are not lost to the districts.

Third, and similarly, LT asserts that when the Treasurer did a special (non-quarterly) allocation in November 2013, the Treasurer only allocated $500,000 of the $783,968 that the Treasurer's auditors found in reviewing the Fiscal Year 2012 audit. Accordingly, LT claims that the remaining $283,968 was never allocated. But again, this unallocated amount remained within the Agency Fund, subject to reinvestment and future allocations. This money did not "go" anywhere.

Fourth, LT asserts the Trustees pledged a CD as security for a bank loan to West 40, one of the districts. West 40 provides services to members of the public, school teachers, and the other educational bodies within Lyons Township. West 40 does not have a tax base, and during the well-publicized State financial shutdown, there was a threat of mass layoffs at West 40. Because this would have hurt everyone in Lyons Township, the Trustees pledged a CD – purchased at or above market interest rates – as collateral for the West 40 loan. The Trustees did this because it was in the best interests of the collective group and this decision was fully disclosed to everyone within Lyons Township. West 40 and the Trustees were assured that State funding would be forthcoming and, sure enough, the loan was repaid in full and ahead of schedule. The collateral was never seized and LT did not suffer any damages because the CD was pledged as collateral.

LT also claims that it did not earn "normal" investment income from the CD. But again, the CD was purchased at or above market interest rates, and the CD and the income generated remained in the Agency Fund, and so LT enjoyed the benefits of the investment. Moreover, LT has not disclosed an expert to calculate what LT's "normal" income.

Finally, LT claims that the Trustees breached their fiduciary duties by incurring what LT characterizes as excessive legal fees in pursuing this lawsuit. This claim is problematic for a number of reasons, not the least of which is that it would require this Court to conduct a trial on the conduct of the entire lawsuit to analyze the legal fees. Further, LT has failed to disclose an expert witness to offer an opinion on whether fees are reasonable or unreasonable.

Moreover – and as respects *each* of LT's claims of breach of fiduciary duties – LT is asking for a judgment against an entity that does not have its own funds out of which any potential judgment might be satisfied. Indeed, LT's seeming belief that Healy, the Trustees, or the current Treasurer somehow have their own funds out of which to pay *for anything* is one of the central reasons why this lawsuit has dragged on for seven years. For all of these reasons, LT should not prevail on its Consolidated Counterclaim.

IX. CONCLUSION

The Trustees request this Court enter a declaratory judgment as follows:

a. With respect to the Trustees claim for LT's non-payment of its pro-rata bills, he Treasurer is authorized to debit $3,289,247.93 from LT's balance held within the Agency Fund; and that pre-judgment interest be assessed against LT under the Illinois Interest Act, to be determined at the rate of five-percent per year against each unpaid pro-rata bill, commencing sixty days after the date of each pro-rata bill as set forth on Plaintiff's Trial Exhibit 75(C);

b. With respect to the Trustees claim for the improper payment of LT's audit and accounting expenses, the Treasurer is authorized to debit $550,566.62 from LT's balance held within the Agency Fund;

c. From this combined debit, LT shall be entitled to a credit equal to an amount to be determined once the above claims are determined, but as described in this Trial Brief;

d. With respect to the Trustees claim for over-allocation of income to LT, the Treasurer is authorized to debit $1,427,442.04 from LT's balance held within the Agency Fund, and reallocate this amount all the districts (including LT), according to each district's percentage share of income as of the quarter of allocation; and that pre-judgment interest to be assessed at five percent based upon general equitable considerations, commencing after each annual over-allocation summarized on Plaintiff's Trial Exhibit 54(B), p.1.

The Trustees also request such other declaratory relief as may be warranted and necessary.

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 October 16, 2020, I electronically filed **PLAINTIFF'S TRIAL BRIEF** 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

36537670.2\154483-00001

Lyons Township School Treasurer
Pro Rata Billing
Fiscal Year Ending June 30, 2008

PLAINTIFF'S EXHIBIT
75(A)

204 Pro Rata Billing History					
Fiscal Year	**Billed To 204**	**204 Paid**	**Receivable**	**Payment Detail**	**Invoice copy**
FY96	144,051	144,051	-	CHK#65458 6/13/97 AP STUB AVAILABLE	YES
FY97	144,004	144,004	-	CHK#73708 6/26/98 AP STUB AVAILABLE	YES
FY98	155,863	155,863	-	CHK#82377 6/99 AP STUB AVAILABLE	YES
FY99	165,476	165,476	-	JE PAYMENT GL DETAIL OF PAYMENT RECEIPT	YES
FY00	173,032	39,743	133,289	CHK#214346 6/27/01 AP STUB AVAILABLE	YES
FY01	178,897	40,498	138,399	CHK#223736 6/02 HANDWRITTEN NOTES CHK#; GL DETAIL OF PAYMENT RECEIPT	YES
FY02	186,502	17,948	168,554	CHK#230705 6/18/03 AP STUB AVAILABLE	YES
FY03	171,265	-	171,265		YES
FY04	179,345	-	179,345		YES
FY05	180,684	-	180,684		YES
FY06	200,680	-	200,680		Missing our bill
FY07	190,328	-	190,328		YES
FY08	245,177	-	245,177		YES
FY09	289,560	-	289,560		YES
FY10	215,973	-	215,973		YES
FY11	216,348	-	216,348		YES
FY12	253,930	-	253,930		YES
Total:	3,291,114	707,583	2,583,532		

PLAINTIFF'S EXHIBIT
53(B)

VENDOR DETAIL
WILLIAM F. GURRIE
VIRCHOW KRAUSE
BAKER TILLY VIRCHOW KRAUSE
FISCAL 1994-2012

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	7/1/1993	BUSINESS SER ANNUAL AUDI	E	73619	1,475.00	5/31/1993	DIST. 204	204	GL
1-2520-317-0-0	7/1/1993	BUSINESS SER ANNUAL AUDI	E	73619	1,205.00	3/31/1993	DIST. 204	204	GL
1-2520-317-0-0	11/15/1993	BUSINESS SER ANNUAL AUDI	E	82813	2,970.00	10/31/1993	DIST. 204	204	GL
1-2520-317-0-0	12/15/1993	BUSINESS SER ANNUAL AUDI	E	91175	1,250.00	11/30/1993	DIST.204	204	GL
1-2520-317-0-0	2/7/1994	PROF SERVICES # 204	C	86028	1,540.00			204	GL
1-2520-317-0-0	4/15/1994	DIST 204	E	90298	4,285.00	3/31/1994		204	GL
1-2520-317-0-0	5/13/1994	DIST 204 BALANCING	E	94599	2,343.00	4/30/1994	DIST 204	204	GL
1-2520-317-0-0	6/15/1994	BUSINESS SER ANNUAL AUDI	E	96496	989.00	5/31/1994	DIST. 204	204	GL
1-2520-318-0-0	6/30/1994	BUSINESS SER LEGAL SERV	E	97924	73.00	4/30/1994	DIST #204	204	GL
1-0000-000-0-0	6/30/1994	REIMB AUDIT EXP	M	JE	15,715.00	6/27/1994		204	YES
1-2520-318-0-0	8/31/1994	BUSINESS SER LEGAL SERV	E	101494	441.00	6/30/1994	DIST 204	204	GL
1-2520-317-0-0	9/30/1994	BUSINESS SER ANNUAL AUDI	E	104232	8,700.00	8/31/1994	DIST. 204	204	GL
1-2520-318-0-0	1/31/1995	BUSINESS SER LEGAL SERV	E	113456	290.00	12/31/1994	SOC SEC #204	204	GL
1-2520-317-0-0	4/12/1995	FLEX & SCHLRSHP	E	119940	75.00	3/28/1995	204	204	GL
1-2520-317-0-0	8/11/1995	FORM 5500-CR	E	127635	350.00	7/21/1995	DIST 204	204	GL
1-2520-317-0-0	8/11/1995	SCHOOL LEVY/TAX CAP	E	127635	160.00	6/30/1995	DIST 204	204	GL
1-2520-317-0-0	9/15/1995	BUSINESS SERANNUAL AUDI	E	129585	7,500.00	8/31/1995	DIST 204	204	GL
1-2520-317-0-0	11/30/1995	BUSINESS SERANNUAL AUDI	E	136511	2,500.00	10/31/1995	DIST 204	204	GL
1-2520-317-0-0	11/30/1995	BUSINESS SERANNUAL AUDI	E	136511	1,500.00	9/30/1995	DIST 204	204	GL
1-2520-318-0-0	12/11/1995	BUSINESS SERLEGAL SERV	E	136567	430.00	10/31/1995	DIST 204	204	GL
1-2520-317-0-0	6/28/1996	BUSINESS SERANNUAL AUDI	E	151793	4,800.00	5/31/1996	DIST 204	204	GL
1-2520-317-0-0	7/15/1996	BUSINESS SERANNUAL AUDI	E	152370	7,200.00	6/30/1996	DIST 204	204	GL
1-2520-317-0-0	10/11/1996	BUSINESS SERANNUAL AUDI	E	158295	1,600.00	9/30/1996	DIST 204	204	GL
1-2520-317-0-0	10/31/1996	BUSINESS SERANNUAL AUDI	E	160108	7,000.00	8/31/1996	DIST. 204	204	GL
1-2520-317-0-0	11/14/1997	BUSINESS SERANNUAL AUDI	E	188826	6,150.00	10/31/1997		204	YES
1-2520-317-0-0	1/7/1998	BUSINESS SERANNUAL AUDI	E	193313	3,150.00	12/31/1997	DIST 204	204	YES
1-2520-317-0-0	7/22/1998	BUSINESS SERANNUAL AUDI	E	13405	5,200.00	7/10/1998	DIST 204	204	YES
1-2520-318-0-0	11/30/1998	BUSINESS SERLEGAL SERV	E	24092	4,000.00	10/31/1998	DIST 204	204	YES
1-2520-318-0-0	12/11/1998	BUSINESS SERLEGAL SERV	E	24913	4,000.00	11/30/1998	Jun-98	204	YES
1-2520-318-0-0	1/15/1999	AUDITS DIST 204	E	26891	1,200.00	12/31/1998	EOY JUNE 98	204	YES
1-2520-317-0-0	7/15/1999	BUSINESS SERANNUAL AUDI	E	41029	2,475.00	6/30/1999	DIST 204	204	YES

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	7/30/1999	BUSINESS SERANNUAL AUDI	E	42139	4,450.00	7/20/1999	DIST 204	204	YES
1-2520-317-0-0	9/15/1999	BUSINESS SERANNUAL AUDI	E	44411	6,000.00	9/3/1999	AUDIT 6/99	204	YES
1-2520-317-0-0	10/29/1999	BUSINESS SERANNUAL AUDI	E	49743	4,105.00	10/12/1999	204 JUNE 99	204	YES
1-2520-317-0-0	11/10/1999	BUSINESS SERANNUAL AUDI	E	49927	1,431.00	10/29/1999	YR END D204	204	YES
1-2520-317-0-0	4/28/2000	AUDIT DIST 204	E	63508	172.70	4/11/2000	550	204	YES
1-2520-317-0-0	4/28/2000	AUDIT DIST 204	E	63508	936.25	1/31/2000	47	204	YES
1-2520-317-0-0	5/15/2000	DIST 204	E	63940	5,762.00	5/4/2000	702	204	YES
1-2520-317-0-0	8/30/2000	AUDIT DIST 204	E	71994	3,880.00	8/15/2000	1116	204	YES
1-2520-317-0-0	10/13/2000	AUDIT DIST 204	E	75155	3,500.00	10/3/2000	1303	204	YES
1-2520-317-0-0	11/15/2000	AUDIT DIST 204	E	78213	4,000.00	11/2/2000	1411	204	YES
1-2520-317-0-0	4/30/2001	AUDIT DIST 204	E	15652	3,000.00	4/11/2001	2386	204	YES
1-2520-317-0-0	7/16/2001	AUDIT DIST 204	E	21778	5,000.00	7/5/2001	2853	204	YES
1-2520-317-0-0	9/28/2001	AUDIT FOR DISTRICT #204	E	27284	4,400.00	9/19/2001	3180	204	YES
1-2520-317-0-0	9/28/2001	CONVERSION OF GASB 34/#204	E	27284	2,500.00	7/18/2001	2906	204	YES
1-2520-317-0-0	9/28/2001	CASH BASIS MODIFIED ACCRUAL #204	E	27284	4,900.00	7/18/2001	2906	204	YES
1-2520-317-0-0	7/15/2002	SD #204 ACCRUAL BASIS ACCT 6/30/02	E	1991	1,750.00	7/15/2002	5024	204	YES
1-2520-317-0-0	7/15/2005	LTHS YR ENDING 6/30/05	E	92513	6,500.00	6/30/2005	11215	204	YES
1-2520-317-0-0	10/15/2002	AUDIT YEAR ENDED 6/30/02 #12040	E	8059	11,600.00	10/3/2002	5489	204	YES
1-2520-317-0-0	10/31/2002	YEAR END 6/30/02 CLIENT 12040	E	10900	4,200.00	10/18/2002	5547	204	YES
1-2520-317-0-0	1/15/2003	CONVERSION OF GASB 34 REPORTING MODEL	E	16591	593.75	12/20/2002	5855	204	YES
1-2520-317-0-0	9/30/2005	SD #204 YR ENDING 6/30/05	E	98006	8,000.00	6/16/2005	11615	204	YES
1-2520-317-0-0	10/31/2005	SD #204 YR ENDING 6/30/05	E	100678	12,300.00	10/17/2005	11714	204	YES
1-2520-317-0-0	11/30/2005	SD #204 YR ENDING 6/30/05	E	103089	6,500.00	11/15/2005	11898	204	YES
1-2520-317-0-0	1/13/2006	SD #204 YR ENDING 6/30/05	E	106478	3,448.69	12/23/2005	12155	204	YES
1-2520-317-0-0	2/15/2006	YR ENDING 6/30/04 FOR SD #204	E	109087	1,017.50	1/31/2006	12422	204	YES
1-2520-317-0-0	6/15/2006	AUDIT FOR SD #204 6/30/06	E	118129	7,500.00	5/31/2006	13152	204	YES
1-2520-317-0-0	7/14/2006	SD #204 AUDIT 6/30/06	E	120731	4,120.00	6/23/2006	VK187966	204	YES
1-2520-317-0-0	8/30/2006	SERVICES FOR 6/30/06 AUDIT	E	123698	17,855.00	8/21/2006	VK194698	204	YES
1-2520-317-0-0	8/30/2006	SERVICES FOR 6/30/06 AUDIT	E	123698	11,695.00	8/24/2006	VK195240	204	YES
1-2520-317-0-0	9/29/2006	AUDIT 6/30/06 FOR DIST. 204	E	126472	4,255.00	9/20/2006	VK198739	204	YES
1-2520-317-0-0	3/15/2007	SD #204 YR END 6/30/06	E	12967	3,510.00	2/23/2007	VK222390	204	YES
1-2520-317-0-0	4/16/2007	AUDIT FOR 6/30/06	E	14979	2,295.00	3/28/2007	VK231123	204	YES
1-2520-317-0-0	5/15/2007	SD #204 6/30/07 AUDIT	E	17295	317.50	4/27/2007	VK245219	204	YES
1-2520-317-0-0	7/16/2007	LTHS 204 AUDIT FOR 6/30/07	E	22211	10,950.00	6/29/2007	VK261182	204	YES
1-2520-317-0-0	9/13/2007	AUDIT FOR 6/30/07	E	25736	1,250.00	8/29/2007	VK268304	204	YES
1-2520-317-0-0	10/30/2007	AUDIT FOR SD #204 6/30/07	E	30328	19,990.00	10/30/2007	VK274450	204	YES
1-2520-317-0-0	10/30/2007	SD #204 AUDIT SERVICES	E	30328	10,445.00	10/25/2007	VK275728	204	YES

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	11/30/2007	AUDIT FOR 6/30/07	E	32980	3,910.00	11/15/2007	VK280894	204	YES
1-2520-317-0-0	12/28/2007	AUDIT FOR 6/30/07	E	37263	5,985.00	12/21/2007	VK284839	204	YES
1-2520-317-0-0	2/14/2008	FINAL BILL FOR AUDIT 6/30/07	E	13061	485.00	1/31/2008	VK291691	204	YES
1-2520-317-0-0	5/9/2008	TIME & EXPENSE FOR #204 MEETING	E	19524	855.10	4/29/2008	VK317005	204	YES
1-2520-317-0-0	6/13/2008	SD #204 AUDITED ENDING 5/31/08	E	22713	1,930.00	5/28/2006	VK325962	204	YES
1-2520-317-0-0	7/15/2008	2ND BILL FOR 2008 AUDIT	E	25092	9,000.00	6/30/2008	VK331461	204	YES
1-2520-317-0-0	8/15/2008	2008 AUDITED FINANCIAL STMTS	E	26623	7,900.00	7/31/2008	VK335759	204	YES
1-2520-317-0-0	10/15/2008	AD #204 AUDIT FOR 6/30/08	E	31249	11,872.76	9/30/2008	VK343587	204	YES
1-2520-317-0-0	11/14/2008	SERVICES ENDING 10/31/08	E	34305	8,942.44	10/29/2008	VK347810	204	YES
1-2520-317-0-0	12/15/2008	SD #204 AUDIT 11/30/08	E	36609	5,654.80	11/25/2008	VK353915	204	YES
1-2520-317-0-0	1/6/2009	AUDIT FOR 12/31/08	E	37974	5,267.55	12/22/2008	VK356942	204	YES
1-2520-317-0-0	3/13/2009	AUDIT ENDING 2/28/09	E	43064	1,050.00	2/26/2009	VK368671	204	YES
1-2520-317-0-0	8/17/2009	AUDIT FOR 6/30/09 ENDING 7/31/09	E	54389	8,500.00	7/28/2009	BT406802	204	YES
1-2520-317-0-0	9/15/2009	SD #204 PERIOD ENDING 8/31/09	E	56338	6,500.00	9/1/2009	BT412949	204	YES
1-2520-317-0-0	10/14/2009	AUDIT ENDING 9/30/09 FOR JUNE	E	58632	22,000.00	9/28/2009	BT414879	204	YES
1-2520-317-0-0	11/13/2009	AUDIT FOR 10/31/09	E	61513	10,000.00	10/28/2009	BT420286	204	YES
1-2520-317-0-0	12/15/2009	AUDIT FOR PERIOD ENDING 11/30/09	E	64026	4,000.00	12/15/2009	BT424391	204	YES
1-2520-317-0-0	1/5/2010	AUDIT ENDING 12/	E	65070	1,500.00	12/29/2009	BT428814	204	YES
1-2520-317-0-0	5/28/2010	AUDIT SD #204 ENDING 4/30/10	E	75778	7,000.00	4/27/2010	BT455209	204	YES
1-2520-317-204-0	10/15/2010	AUDIT ENDING 9/30/10 FOR 6/30/10	E	85599	23,500.00	9/29/2010	BT482616	204	YES
1-2520-317-204-0	11/16/2010	SD #204 AUDIT ENDING 10/31/10	E	88601	2,000.00	10/29/2010	BT489027	204	YES
1-2520-317-204-0	12/14/2010	SD #204 AUDIT ENDING 11/30/10	E	126632	5,000.00	11/29/2010	BT492203	204	YES
1-2520-317-204-0	1/4/2011	AUDIT ENDING 12/18/10 SD #204	E	127733	3,625.00	12/22/2010	BT495134	204	YES
1-2520-317-204-0	2/15/2011	AUDIT ENDING 1/31/11 FOR 6/30/10	E	130609	750.00	1/28/2011	BT500082	204	YES
1-2520-317-204-0	3/15/2011	AUDIT FOR SD #204 ENDING 2/28/11	E	132615	395.56	2/25/2011	BT505086	204	YES
1-2520-317-204-0	7/15/2011	SD #204 AUDIT ENDING FOR 6/30/11	E	141908	6,700.00	7/15/2011	BT535498	204	YES
1-2520-317-0-0	11/15/2011	PROFESSIONAL SERV 10-31 THRU 6-30-	E	150247	29,800.00	10/28/2011	BT551560	204	YES
1-2520-317-0-0	1/13/2012	BUSINESS SERAUDIT WORK TTO	E	3635	2,500.00	12/22/2011	BT560281	204	YES
1-2520-317-0-0	6/12/2012	AUDIT WORK TTO	E	13933	9,750.00	5/22/2012	BT596768	204	YES
					511,068.60				

PLAINTIFF'S EXHIBIT

53(C)

Supplemental District 204's Audit and Accounting Expenses Paid for by the TTO

Fund Account Number	Report Description	Add. Rpt. Descrp.	Invoice Addressee	Invoice Date	Invoice Description	Client No.	Check Date	Check #	Invoice Amount
1-2520-317-0-0	Business Serannual Audi	1204	LTSTO	8/31/2000	Audit of your financial statements for year ended 6/30/2000	12040	9/14/2000	72290	8,100.00
1-2520-317-0-0	AUDIT TTO OFFICE	3141	LTSTO	9/11/2001	Audit of your financial statements for year ended 6/30/2001	12040	9/28/2001	27284	8,000.00
1-2520-317-0-0	AUDIT 6/30/01 ACCRUAL BSIS ACCTNG	3261	LTSTO	9/30/2001	Audit of your financial statements for year ended 6/30/2001 on the modified accrual basis of accounting	12040	10/15/2001	27805	2,500.00
1-2520-317-0-0	ACCRUAL AUDIT GASB34 FOR 6/30/01	3347	LTSTO	10/24/2001	Audit of financial statements on a modified accrual basis of accounting in accordance with GASB 34 for 6/30/2001	12040	10/31/2001	29840	2,500.00
1-2520-317-0-0	PROFESSIONAL SERVICES 6/30/01	3639	LTSTO	12/18/2001	Audit of financial statements and conversion to modified accrual basis for year ended 6/30/2001	12040	12/28/2001	34897	5,000.00
1-2520-317-0-0	AUDIT FINANCIAL STATEMENTS 6/30/02	5416	LTSTO	9/18/2002	Audit of financial statements for year ended 6/30/2002 on the modified accrual basis of accounting	12040	9/30/2002	7367	10,900.00
1-2520-317-0-0	FIXED ASSES CONV GASB 34 #12040	5497	LTSTO	10/3/2002	Review of fixes asset records for conversion to GASB 34	12040	10/15/2002	8059	1,043.02
1-2520-317-0-0	Conversion On Gasb 34	7971	LTHS D204	12/11/2003	Conversion to the new reporting model under GASB 34 and work on fixes assets related thereto. Final Bill	13500	12/30/2003	49024	1,455.00
								Totals	**39,498.02**

Martin:

"Interest Allocation 2"

PLAINTIFF'S EXHIBIT
54(B)

District 204
Interest Allocation Analysis
Summary of Differences by Fiscal Year

Fiscal Year	RH Calculation vs General Ledger +/- $1,000 per Quarter
FY1995	5,000.34
FY1996	
FY1997	44,903.13
FY1998	(95,052.36)
FY1999	
FY2000	2,499.65
FY2001	
FY2002	
FY2003	
FY2004	
FY2005	127,611.74
FY2006	420,744.00
FY2007	827,163.47
FY2008	127,863.26
FY2009	246,711.45
FY2010	
FY2011	(240,001.56)
FY2012	(40,001.08)
	$ 1,427,442.04

MARTIN
#7