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

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CIRCUIT CLERK
COOK COUNTY, IL
2013CH23386
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TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12)
EAST,)
)
) **Plaintiff,**)
)
vs.)
)
LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)
)
) **Defendant.**)

No. 13 CH 23386
Hon. Thomas R. Mulroy
Commercial Calendar I

SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, by its undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, for its Second Amended Verified Complaint for Declaratory Relief against the defendant, Lyons Township High School District No. 204, states as follows:

THE PARTIES, JURISDICTION AND VENUE

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

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

THE ROLE OF THE TRUSTEES AND TREASURER

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

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

7. The Districts contain thirty-eight schools servicing almost 20,000 students.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Agency Accounts are funded by transfer from other accounts in the custody of the Treasurer and maintained and utilized by the Treasurer to hold funds belonging to multiple

districts and for which there is not an immediate need. The funds in the Agency Account, both before and after they arrive in the Agency Account, remain in the custody of the Treasurer.

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

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

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

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

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

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

28. This statutory formula is mandatory and can only be changed by the General Assembly. No district may unilaterally decide it does not wish to pay its *pro rata* share, nor may

any private agreements be made between public bodies in violation of the School Code. A district is required to pay the amount calculated and has no statutory authority to deduct any of its own expenses from its *pro rata* share it owes.

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

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

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

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices to LT for its *pro rata* share, but LT did not pay those invoices in full and instead only made a partial payment. For these fiscal years LT failed to pay \$381,169.

33. In fiscal years 2003 through 2012, the Treasurer submitted invoices to LT for its *pro rata* share. LT, however, failed to pay any portion of the amount it owed. For these fiscal years LT failed to pay \$2,143,289.66.

34. In fiscal years 2013 through 2018, the Treasurer submitted invoices to LT for its *pro rata* share, but LT again did not pay those invoices in full and only made a partial payment. For these fiscal years LT failed to pay \$642,702.94.

35. In total, for fiscal years 2000 through 2018, the amount of LT's unpaid *pro rata* share totals \$3,167,161.60.

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

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

THE ERRONEOUS ALLOCATION OF INTEREST TO LT

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

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

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

college district or educational service region, as the case may be, for which the investment was acquired.”

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

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

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

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

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

46. To the extent LT has been over-allocated this interest, it means the other districts have necessarily been under-allocated interest. The Treasurer anticipates that once this interest is able to be properly reallocated among the districts, as examples, LaGrange School District 102

would get allocated approximately \$265,626 in interest and Argo Community High School District 217 would get allocated approximately \$319,077 in interest.

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

LT'S NON-PAYMENT OF ITS OWN AUDIT EXPENSES

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

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

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

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

52. LT's auditors sent their invoices to LT.

53. Between 1993 and 2012, each district except LT paid for its audit through their Agency Account, with just a few isolated exceptions. The Treasurer did not pay for those districts' audits from its General Fund.

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

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

56. Since 2012, LT has paid its own audit expenses.

57. Because the Treasurer's General Fund is funded by the *pro rata* payment of all of the Districts, the practical effect of LT's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of LT's audits. This violates the School Code's requirement that LT pay for its own audit, but it also violates the School Code because LT's audit is not an expense of the Treasurer's office; it is an expense of LT.

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

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

60. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from

LT so that the other districts it serves will not suffer harm and to make those bookkeeping entries necessary to properly allocate the funds at issue.

THE TRUSTEES SEEK A DECLARATORY JUDGMENT

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

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

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

B. Between 2000 and 2018, LT has failed to pay its *pro rata* share of the Treasurer's compensation and expenses as required by Section 8-4 of the School Code; LT's unpaid share of its *pro rata* share of the Treasurer's compensation and expenses for fiscal years 2000 through 2018 is \$3,167,161.60, or such other amount as may be proven at trial;

C. The Trustees are authorized to have the Treasurer debit \$3,167,161.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to LT, or from funds otherwise allocated to LT, in payment of LT's *pro rata* share of the Treasurer's compensation and expenses incurred during fiscal years 2000 through 2018, and authorized to have the Treasurer credit the unallocated deficit by this same amount;

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

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

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

G. The Trustees are authorized to have the Treasurer debit \$511,068.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to LT, or from funds otherwise allocated to LT, in payment of LT's audit expenses, and to make certain bookkeeping entries necessary to reallocate the payments made by the Districts during the time period 1993 through 2012 ; and

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

Respectfully submitted,

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

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

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2019, I electronically filed **SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY RELIEF** 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

VERIFICATION

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

Dated: Sept 13, 2019



Michael Thiessen, on behalf of Plaintiff