

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

2014 SEP -8 PM 2:10

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

Plaintiff,

vs.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT NO. 204

Defendants

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

No. 13 CH 23386 CLERK

Judge Sophia H. Hall  
Calendar 14

NOTICE OF FILING

**TO:** Charles A. LeMoine  
Rosa M. Tumialán  
Stephen M. Mahieu  
Dykema Gossett PLLC  
10 S. Wacker Drive, Suite 2300  
Chicago, IL 60606

PLEASE TAKE NOTICE that on September 8, 2014, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **Plaintiff's Response to Defendant's Motion to Reconsider**, a copy of which is hereby attached and served on you.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: 

One of its attorneys.

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No. 48237

### **PROOF OF SERVICE**

The undersigned, an attorney, certifies that copies of the following documents:

#### **Plaintiff's Response to Defendant's Motion to Reconsider**

has been served upon:

Charles A. LeMoine  
[clemoine@dykema.com](mailto:clemoine@dykema.com)  
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as follows:

- ☐ by personal service on September 8, 2014 before 4:00 p.m.
- X by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 20 S. Clark Street, Chicago, Illinois, on September 8, 2014 before 4:00 p.m.
- ☐ by facsimile transmission from 20 S. Clark Street, Suite 2900, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 630-7939, consisting of \_\_\_\_ pages on September 8, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.
- ☐ by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on September 8, 2014 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
- ☐ by \_\_\_\_\_, on September 8, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.

  
Barry P. Kaltenebach, attorney

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

2014 SEP -8 PM 2:17

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

Plaintiff,

vs.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT NO. 204

Defendants

)  
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) No. 13 CH 23386 CLERK  
) JUDGE SOPHIA H. HALL  
) Calendar 14  
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**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees"), for its Response to the Motion to Reconsider Order of June 18, 2014, filed by defendant, Lyons Township High School District No. 204's ("District 204"), states as follows:

**I. INTRODUCTION**

Township Trustees filed its Verified Complaint for Declaratory Relief on October 16, 2013. District 204 filed its original Motion to Dismiss on January 31, 2013. District 204 first argued that Township Trustees had failed to attach certain invoices to its Verified Complaint. This Court denied that aspect of the Motion to Dismiss because Illinois law did not require evidence, such as the invoices at issue, to be attached to the Verified Complaint. District 204 next argued that the equitable doctrine of laches barred the Township Trustees' action. This Court denied that aspect of the Motion to Dismiss without prejudice, finding that there was not a sufficient factual record before it to determine the applicability of laches. Finally, and germane to the Motion to Reconsider, District 204 argued that the Township Trustees' action was barred

by a five-year limitations period. This Court also denied that aspect of the Motion to Dismiss. It is this last argument that District 204 now wishes to re-argue.

**II. DEFENDANT OFFERS ONLY REHASHED ARGUMENT TO SUPPORT WHAT WOULD BE AN INTERLOCUTORY, EVIDENTIARY RULING**

“The purpose of a motion to reconsider is to bring to the trial court’s attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand.” *River Vill. I, LLC v. Central Ins. Cos.*, 396 Ill. App. 3d 480, 492 (1st Dist. 2009). In its Motion to Reconsider, District 204 does not assert the existence of any new evidence or a change in the governing law. Indeed, District 204 submits no new case law whatsoever in support of its Motion. District 204 merely rehashes its argument using new words. This Court has already considered District 204’s arguments and the legal authority at issue.

Notably, even if District 204 were to prevail on its Motion to Reconsider, this lawsuit will continue. District 204 acknowledges that the Township Trustees have, minimally, the right to proceed against it with respect to the allocation of public funds over the past five years. District 204 does not seek dismissal of this lawsuit, but rather an interlocutory ruling on whether there is a five-year limitations period, or no limitations period. This is akin to asking for an evidentiary ruling at the pleadings stage. Moreover, District 204 seeks this ruling at this initial stage of the proceedings and without this Court having the benefit of a fully-developed record. Township Trustees believe that the evidence will indeed show that all of the funds at issue are public funds that the Trustees **continue to hold in trust** and that public rights are at stake. District 204 is free to assert the limitations period as an affirmative defense and move for summary judgment once a record has been developed. This Court will then have all of the facts in front of it and can make its ruling.

For this reason, from a procedural standpoint, this Court should exercise its discretion and deny the Motion to Reconsider. *See Cable America, Inc. v. Pace Elecs., Inc.*, 396 Ill. App. 3d 15, 18 (1st Dist. 2009) (affirming the trial court's discretion to deny motion to reconsider). On the merits, however, this Court should deny the Motion to Reconsider because the statute of limitations does not bar an action brought by a public entity seeking to enforce public rights. This Court correctly denied District 204's Motion to Dismiss the first time.

### **III. BRIEF SUMMARY OF RELEVANT FACTUAL ALLEGATIONS**

Pursuant to the Illinois School Code, 105/ ILCS 5/8-7, the Lyons Township Treasurer ("Treasurer") is appointed by the Township Trustees to act on its behalf as the sole custodian of public funds held on behalf of eleven school districts located within Lyons Township as well as two additional educational cooperatives and a medical self-insurance cooperative. (Compl., ¶4). As the parties and this Court have discussed, there are three primary categories of monies to which Township Trustees seek declaratory relief.

First, Section 5/8-4 of the School Code provides, in part that "[e]ach...township high school district...shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expense of the treasurer's office". (Compl., ¶5). District 204's unpaid *pro rata* share for the years 2000 through 2011, which the School Code mandates it pay, totals in excess of \$2,500,000.00. (Compl., ¶13).

Second, one of the duties of the Treasurer, pursuant to Section 5/8-7 of the School Code, is to allocate interest earned on the investment of funds held on behalf of the school districts (Compl., ¶14). Between 1995 through 2012, District 204 was improperly allocated \$1,380,496.53 in principal and interest on investments that it was not entitled to receive and that should be re-allocated to the other public entities in the township. (Compl., ¶14).



Third, between the years 1993 and 2011, at District 204's request, the Treasurer paid \$473,174.85 to Baker Tilly for audit and other professional services rendered to District 204. (Compl., ¶16). District 204 was and is responsible for the costs of these audits and is obligated to reimburse the Treasurer for these monies so they can be properly allocated to the other public entities, but District 204 has failed and refused to do so. (Compl., ¶16).

#### IV. ARGUMENT

This Court did not err in originally denying District 204's Motion to Dismiss. The statute of limitations does not bar the Township Trustees' claims because the claims concern public funds founded upon Illinois statute that the Treasurer **still holds in trust**. Further, the limitations period does not apply because the Township Trustees are seeking to enforce a public right.

##### A. The Treasurer Continues to Hold the Public Funds in Trust.

Township Trustees' claims relating to each of the three categories of monies at issue are not subject to the statute of limitations because they involve public trust funds that are and remain to this day in the hands of the Treasurer. Given this fact, the authority that District 204 relies upon is distinguishable and does not support District 204's argument.

District 204 mis-identifies the plaintiff in *School Directors of Dist. No. 5 v. School Directors of Dist. No. 1*, 105 Ill. 653 (1883). In its Motion to Reconsider, District 204 states that "[t]he plaintiff in *School Directors* was a township treasurer . . . ." (Motion to Reconsider at 3). This is erroneous, as the plaintiff was the School Directors of District No. 5. *Id.* at 655. A township treasurer was not a party to the case.

In *School Directors*, a township treasurer erroneously paid certain taxes it had collected to District 1 instead of District 5. The School Directors of District 5 then sued the School Directors of District 1 to recoup the erroneous payments. The Illinois Supreme Court held that the statute of limitations applied to bar the School Directors of District 5 from recovering the

payment at issue. The Court stated, “as long as [the township treasurer] held the money, it was a trust fund in his hands, but when he paid it out to [District 1] . . . it was not a trust fund in [District 1]’s hands which would exclude the operation of the Statute of Limitations.” *Id.* at 656.

*School Directors* makes clear that the taxes, while still in the hands of the township treasurer, are public trust funds. When another school district received the payment, however, such district did not hold them in trust (unlike the township treasurer). In making its ruling, the Court distinguished the relationship between the two school districts as opposed to their relationship with the township treasurer by stating “[t]here was no proper trust relationship between [District 5] and [District 1],” and describing the litigation between the two school districts as a “personal suit . . . .” *Id.* at 656.

Conversely, in this case, there is a “proper trust relationship” between the Township Trustees, through the Treasurer, and District 204. This is not a case of one school district suing another school district. Additionally, it is not a personal suit founded in equity to which the statute of limitations would apply, it is one founded on statute.

Similarly, in *Trustees of Schools v. Arnold*, 58 Ill. App. 103, 108-09 (4th Dist. 1895), the Appellate Court also made the distinction between private claims and those founded upon statute, stating “where the liability of the defendant is created, not merely by the act of the parties, but by the positive requirements of a statute, the plaintiff is not barred by the statute of limitations.” (Internal quotations and citation omitted). In *Arnold*, the statute of limitations was found not to apply to claims by the trustees of schools against a treasurer regarding funds the treasurer had mishandled. The Appellate Court likened the funds to the public funds at issue in *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1976), and held the statute of limitations was not a defense as to funds in the hands of the treasurer, because “public funds” were involved.

*Arnold*, 58 Ill. App.. at 108. Rather, such funds are “a trust fund . . . [i]t is appropriated to a specific purpose by law and until so devoted there is no authority to divert it.” *Id.* at 107-08.

District 204 attempts to use these cases to support its position by arguing that they stand for the proposition that the Township Trustees have already “paid out” the relevant funds and, hence, they are no longer public funds being held in trust. (Motion to Reconsider at 3-4). This might be true if the funds at issue had actually left the hands of the Treasurer, but they have not.

Neither the *School Directors* nor the *Arnold* opinions give detail as to what actually happened to the funds at issue. District 204 has not explained the statutory framework in the 1880’s and 1890’s. Under the current School Code, however, with respect to Class II counties, the Treasurer is the **sole** legal custodian for all school district funds, including those funds allocable to District 204. 105 ILCS 5/8-7. Even when the Treasurer “pays out” funds to District 204, those funds still remain public trust funds in the Treasurer’s custody. In essence, the “payment” is little more than a bookkeeping entry. District 204 has brought forth evidence that it has taken custody of the funds and deposited them into its own bank account.<sup>1</sup>

With respect to the overpayments of interest to District 204, even though the interest has been allocated on paper to District 204, such overpayments still remain in the hands of the Treasurer. The Treasurer continues to hold these overpayments in trust. Accordingly, the statute of limitations cannot apply to bar the Township Trustees’ claim for declaratory relief.

With respect to the Treasurer’s payment of District 204’s audit costs to Baker Tilly, the arguments advanced by District 204 might have relevance were the Township Trustees suing Baker Tilly to recoup the payments. Under *School Directors*, Baker Tilly did not take the

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<sup>1</sup> This is one area where District 204’s decision to seek what amounts to an interlocutory, evidentiary ruling via its Motion to Dismiss and Motion to Reconsider would deprive this Court of an adequate record. District 204’s position is premised upon the supposition that the funds at issue have left the Treasurer’s custody. District 204, however, has not carried its burden of production on this point, or its burden of persuasion at this initial stage of the proceedings.



payments in trust and Baker Tilly would be entitled to assert the statute of limitations as a defense if any party sought to recoup those payments. But Township Trustees are not claiming Baker Tilly is holding public funds.

Under the School Code, District 204 is statutorily responsible for paying Baker Tilly. The Treasurer advanced payment to Baker Tilly on District 204's behalf. The Township Trustees seek declaratory relief that the Treasurer is entitled to be reimbursed by District 204 and permitting the Treasurer to allocate funds already in its custody to effectuate such reimbursement.

Township Trustees also seeks declaratory relief with respect to District 204's *pro rata* share of the Treasurer's expenses. Township Trustees do not seek a money judgment from District 204. They seek to allocate public funds in the Treasurer's hands. For this reason, the statute of limitations is not applicable.

*City of Lincoln* also makes clear that a public entity's claim to recover public trust funds is exempt from the statute of limitations. In *City of Lincoln*, the city sued to recover certain taxes collected by Logan County that should have been statutorily paid to the city. 81 Ill. at 158-59. The Board of Supervisors of Logan County asserted the statute of limitations as a defense. The Illinois Supreme Court found the obligation to make the payments did not arise out of contract, but rather was created by statute. *Id.* Accordingly, the statute of limitations did not prohibit the city's action. *Id.* "The obligation created by the statute bears no analogy to a right springing out of contract . . . ." *Id.* at 159. As in *City of Lincoln*, District 204's obligation to pay its *pro rata* share of expenses is dictated by statute, as is its allocation of investment principal and interest. The statute of limitations cannot be applied to prohibit the Township Trustees' enforcement of the School Code.

None of the declaratory relief sought by Township Trustees involves the recovery of funds that have left the custody of the Treasurer. The monies at issue are all public funds being held in trust by the Treasurer. The statute of limitations does not apply to this action and the Court correctly ruled on this matter the first time by denying District 204's original Motion to Dismiss. The Motion to Reconsider adds nothing new and does not warrant this Court reversing itself. District 204 has failed to carry its burden of placing an adequate record in front of this Court that would warrant granting the relief District 204 seeks. Township Trustees have no objection to this Court continuing to make its denial of the arguments advanced by District 204 to be without prejudice.

**B. Township Trustees Seeks to Enforce a Public Right.**

Under the doctrine of *nullum tempus occurrit 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). This doctrine is based on the policy that the public should not suffer if public officers and agents fail to promptly assert causes of action belonging to the public. *Id.* at 461; *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 472 (1989).

District 204 relies solely upon to *Brown v. Trustees of Schools*, 224 Ill. 184 (1906), to support its casual dismissal of this action as not involving a public right because only “a few local school districts” are at issue. (Motion to Reconsider at 7). The facts of *Brown*, however, are markedly different than those before this court. In *Brown*, a portion of single school house lot had been adversely possessed by a private citizen for more than twenty years. *Id.* at 185. The Illinois Supreme Court held that the effort to recover this portion of the lot did not involve a “public right,” but rather that the lot would be used for strictly local purposes. *Id.* at 188.

Over eighty years later, the Illinois Supreme Court explained the limited scope of its decision in *Brown* in the case *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989). In *A, C & S*, thirty-four school districts brought suit against asbestos-industry defendants, seeking to recover their costs of remediating asbestos. *Id.* at 436. The asbestos-industry defendants, too, relied upon *Brown* in support of their argument that the school districts were not asserting sufficiently “public rights” because the remediation of only a select number of school buildings was at issue. *Id.* at 472-74. The Illinois Supreme Court rejected this rationale and defendants’ reliance on in earlier decision in *Brown*.

The Illinois Supreme Court explained that to enforce a public right, “the governmental body need not be asserting an interest affecting everyone in the State.” *Id.* at 474. Rather, there need only be a “sufficient interest in the general public.” *Id.* The Court distinguished its holding in *Brown* by noting that in *Brown* only a single portion of a school house lot was at issue, whereas in *A, C & S* “numerous school districts and buildings, rather than a single tract of land” were at issue. *Id.* Although District 204 argues in its Motion to Reconsider that only “a few local school districts” are at issue, District 204 provides no support in the record for its supposition. Akin to the assertion of a sufficiently public right in *A, C & S* and unlike *Brown*, this lawsuit involves eleven school districts, three other public entities, and thirty-eight school buildings.<sup>2</sup>

Additionally in *A, C & S*, the Illinois Supreme Court reiterated the three factor test used to determine if a governmental entity is asserting a public right: (1) the interest of the public; (2) the obligation of the governmental entity to act on behalf of the public; and (3) the extent to

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<sup>2</sup> District 204 assails Township Trustees and argues that Township Trustees has “pled no facts” to establish a public right is at issue in this lawsuit. (Motion to Reconsider at 7). But District 204 bears the burden of production and persuasion in establishing its affirmative defense. This argument also highlights the problem of District 204 seeking what amounts to an interlocutory, evidentiary ruling at the pleading stage of this proceeding without this Court having the benefit of a proper record before it.

which public funds must be expended. *Id.* at 476 (citing *Shelbyville*, 96 Ill. 2d at 464-65). District 204 offers no analysis of these factors in its blind reliance upon *Brown*.

With respect to the first factor, as in *A, C & S* where the Illinois Supreme Court found that the interests of thirty-four school districts were “sufficiently public,” there is a sufficiently public interest at stake. The Township Trustees, through the Treasurer, receives public funds, including property taxes, and hold them for the benefit of public entities charged with educating children – one of the most fundamental of all public functions. 105 ILCS 5/8-17. The erroneous allocation (or failure to allocate) the monies at issue has a direct and negative financial impact on the Treasurer, the other public bodies, and their respective students, employees and taxpayers. Funds held in trust by the Treasurer are for the benefit of the students, employees and other members of the eleven school districts located within Lyons Township, the two additional educational cooperatives, and the medical self-insurance cooperative. District 204’s failure to pay its fair share has reduced the total amount of funds held by the Treasurer and diminished the funds that would otherwise have been available to be distributed among these other thirteen public entities.

The Township Trustees’ claims also satisfy the second factor. The Treasurer is the, “only lawful custodian of all school funds and shall demand receipt for and safely keep, according to law, all bonds, mortgages, notes, moneys, effects, books and papers belonging to any school district or township, as the case may be, which he serves as treasurer.” 105 ILCS 5/8-7. The Treasurer is required to collect from each school district their *pro rata* share of the Treasurer’s compensation and expenses. 105 ILCS 5/8-4. The Treasurer is required to allocate interest earned on investment of fund held on behalf of the districts. 105 ILCS 5/8-7. District 204 is

obligated to pay for its audit expenses. Pursuant to the School Code, the Treasurer has a mandatory duty to act.

The Township Trustees claim also satisfies the third factor, which examines the fiscal effect on public funds. In this case, in excess of \$4 million is at stake. As the Illinois Supreme Court noted in *A, C & S*, “[w]e are not dealing here with small sums of money; rather [the damages] will run into the millions.” 131 Ill. 2d at 476. District 204’s failure to pay its fair share of the Treasurer’s expenses and for the Baker Tilly audit it commissioned, coupled with the erroneous allocation of investment principal and interest to it, has created a deficit in the public trust fund to the detriment of the other thirteen public entities involved.

Township Trustees’ claims satisfy the three factor test established by the Illinois Supreme Court to determine if a governmental entity is seeking a public right. Township Trustees’ claims are dissimilar from the single piece of land at issue in *Brown* and District 204’s reliance on *Brown* falls short of supporting its argument. This Court should deny the Motion to Reconsider.

## **V. CONCLUSION**

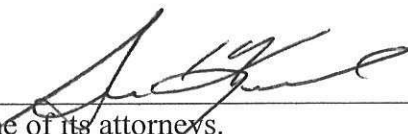
This Court did not err when denying District 204’s original Motion to Dismiss in June 2014 and District 204 has not advanced any good reason why this Court should reverse itself at this stage, particularly given the lack of a factual record upon which this Court might base its decisions. District 204 seeks what amounts to an interlocutory, evidentiary ruling because even if District 204 prevails, this lawsuit will continue. This Court should exercise its discretion and deny the Motion to Reconsider.

WHEREFORE, for the reasons stated herein, plaintiff, Township Trustees of Schools Township 38 North, Ranger 12 East, respectfully requests that this Court enter an Order denying

the Motion to Reconsider Order of June 18, 2014 and grant it such other and further relief as is appropriate.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By:   
One of its attorneys.

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