

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

LYONS TOWNSHIP TRUSTEES OF SCHOOLS, )	
TOWNSHIP 38 NORTH, RANGE 12 EAST, )	
)	
Plaintiff, )	No. 2018 CH 08263
)	
v. )	
)	Judge Diane J. Larsen
LYONS TOWNSHIP HIGH SCHOOL )	
DISTRICT 204, )	Calendar 7
)	
Defendant. )	

**LT’S MOTION TO STRIKE THE PRAYER FOR RELIEF IN THE  
TTO’S COMPLAINT PURSUANT TO SECTION 2-617**

**Introduction**

Defendant Lyons Township High School District 204 (“LT”), by its counsel and pursuant to 735 ILCS 5/2-617, respectfully asks this Court to strike the prayer for declaratory relief in the TTO’s Complaint, which is improper because the TTO has an adequate remedy at law. LT views this motion as a first step to filing a renewed motion to transfer this case to the Law Division for a jury trial. As we recently learned from a prior, and now withdrawn, motion, the transfer is opposed by Plaintiff Lyons Township Trustees Of Schools Township 38 North, Range 12 East (“the TTO”), in part based on the declaratory nature of its action. This Section 2-617 motion to strike the prayer for relief is a motion that may be filed at any time in a proceeding.

In the Complaint, the TTO complains that LT responded to a series of invoices it sent to LT with only partial payments, and that LT still owes the TTO \$636,740.08. LT denies that these invoices were proper, and denies that it owes any money to the TTO. While the TTO styled the Complaint as a claim for declaratory relief, the declaratory relief that the TTO seeks is (a) a “declaration” that LT owes \$636,740.08 to the TTO, and (2) a “declaration” that the TTO may

collect on the alleged debt by taking that money from funds belonging to LT that the TTO holds in certain agency accounts.

Because the TTO has an adequate remedy at law – namely, an award of monetary damages – the TTO’s prayer for declaratory relief must be stricken. Once this is done, LT will move for a transfer to the Law Division to facilitate the jury trial that LT previously demanded.

### **The Parties and the Agency Accounts**

LT is a public high school operating in suburban Cook County. The TTO is an archaic and little-known form of government called a township trustees of schools. These were established in the 19<sup>th</sup> century to help schools account for and manage their tax revenues and expenditures, as well as hold and invest their school funds. “In 1962, state lawmakers, thinking the township school positions were outmoded, abolished the offices throughout Illinois – except in suburban Cook County, where politics played a role in their preservation.” (Chicago Tribune, 11/5/1995, Exhibit A.)

Pursuant to legislation enacted on August 17, 2018, LT finally will be able to leave the TTO at the later of July 1, 2019, or “upon final judgment, including the exhaustion of all appeals or a settlement between the parties, of [the 2013 case] and all related pending claims ....” (Public Act 100-0921, Exhibit B.) Thus, until the present case is finally over, LT cannot leave the TTO.

Under the authority of the Illinois School Code, the TTO maintains separate accounts for the TTO and for each of the member school districts, including LT. According to the TTO, the accounts of LT and the other school districts contain “agency funds which we manage on their behalf.” (Theissen Dep. Excerpt, Exhibit C, p. 7-8.)

The Complaint in this case alleges that the TTO is holding, “as custodian,” tens of millions of dollars “that belong to District 204 [i.e., LT] and that District 204 could utilize to pay its

invoices.” (Complaint, Exhibit D, ¶ 23.) The TTO has admitted that it maintains “Agency Accounts’ at local banks.” (Verified Am. Complaint in 2013 Case, Exhibit E, ¶ 20.)

The TTO has no authority to authorize the disbursement of LT’s agency funds, and LT must authorize disbursements from its accounts. The TTO has admitted that it is statutorily obligated to make payments from an agency account of a school district only upon receiving “a lawful instruction to the Treasurer to issue payment” from the school district. (Ex. E, ¶ 21.)

### **The Procedural History**

In 2013, the TTO sued LT in a case that is now pending before Judge Sophia Hall. Although the case currently is in the Chancery Division, Judge Hall has informed the parties that she intends to transfer the case to the Law Division for a jury trial. In late 2018, LT learned that the TTO now objects to that expected transfer. The parties will work that issue out before Judge Hall. Also, in 2017, the TTO attempted to amend its complaint in the 2013 Case by adding additional claims. Judge Hall refused to allow the amendment because fact and expert discovery was closed, and the parties were proceeding to dispositive motions on the pending claims.

In 2018, the TTO initiated this action in the Chancery Division with the filing of a single-count Complaint. These are the additional claims it tried to add to the 2013 Case. The Complaint asserts that the TTO, under the Illinois School Code, has the right to issue an annual invoice to LT for a proportionate share of the compensation of the TTO’s Treasurer and the expenses of the Treasurer’s office. (Complaint, Ex. B, ¶ 10.) The TTO further asserts that LT “has failed to pay \$636,740.08.” (*Id.* ¶ 21.)

In the prayer for relief, the Complaint asks the Court to issue a declaratory judgment that:

A. Between fiscal years 2014 and 2017, inclusive, District 204 has failed to pay its proportionate share of the Treasurer’s compensation and expenses of office, as required by Section 8-4 of the School Code, totaling \$636,740.08, or such other amount as may be proven;

B. The Treasurer is authorized to debit from the funds it currently holds as custodian for District 204 the amount determine to be owed by District 204; and

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

(*Id.* p. 6.)

Thus, the TTO's prayer for relief asks this Court to enter a declaratory judgment that LT owes the TTO \$636,740.08 on four partially paid invoices, and that the TTO may recover this debt by taking this same amount out of LT's agency accounts with the Court's authorization.

In response to the Complaint, LT filed an answer, affirmative defense, counterclaim, and jury demand. In November 2018, LT filed a short motion to transfer this case to the Law Division for eventual jury trial. LT expected that this motion would be unopposed, in light of Judge Hall's stated intention to transfer the 2013 Case to the Law Division for jury trial, and the TTO's lack of an objection. However, the TTO – as was its right – objected to the transfer. The TTO argued, in part, that LT has no right to a jury trial under certain legal authority that governs claims for declaratory relief. (TTO Response, Exhibit F, p. 4.)

Because the TTO's objections to the transfer merited a more detailed consideration, in December 2018, the Court in this case allowed LT to withdraw its transfer motion “without prejudice” and with the right to “refile this motion at a later date.” (Order dated 12/17/2018, Exhibit G, ¶ 3.)

### **Argument**

#### **I. THE TTO'S PRAYER FOR DECLARATORY RELIEF IS IMPROPER AND SHOULD BE STRICKEN UNDER SECTION 2-617.**

##### **A. The Applicable Law**

Section 2-617 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-617, authorizes the striking of improper prayers for relief, such as where an adequate remedy at law exists. *Five Mile*

*Capital v. Berkadia Commer. Mortg.*, 2012 IL App (1<sup>st</sup>) 122812, ¶ 14. Section 2-617 motions are distinguishable from motions to dismiss under Section 2-615, *id.*, which simply test whether the claim states “a cause of action upon which relief may be granted.” 735 ILCS 5/2-615; *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 53. “The appropriate remedy is to strike the plaintiff’s prayer for relief and allow the plaintiff to pursue its remedy at law.” *Fulton-Carroll Ctr. v. Indus. Council of Northwest Chi.*, 256 Ill.App.3d 821, 824-25 (1<sup>st</sup> Dist. 1993).

A party may contest the relief sought in a complaint based on the existence of an adequate legal remedy at any stage of the case, even at the close of trial: “The argument could be raised at the pleading stage, by way of summary judgment, at the close of the plaintiff’s case at trial, or at the close of trial as a whole.” *Horwitz v. Sonnenschein Nath & Rosenthal*, 2018 IL App (1<sup>st</sup>) 161909, ¶ 41.

Under settled Illinois law, a party may not seek declaratory relief or other equitable relief in a Chancery action where there is an adequate remedy at law for a party’s claim: “Despite the merger of law and equity in our modern court system, equitable relief, such as a declaratory judgment, will not be granted where there is an otherwise adequate remedy at law.” *Ives v. Limestone*, 62 Ill.App.3d 771, 772 (3<sup>rd</sup> Dist. 1978). Likewise, in a discussion concerning “equitable relief,” the Court ruled that because the plaintiffs had “an adequate remedy at law, plaintiffs are not entitled to the declaratory relief they seek.” *Givot v. Orr*, 321 Ill.App.3d 78, 85 (1<sup>st</sup> Dist. 2001).

Court in Illinois have consistently decided that a party has an adequate remedy at law “[w]here the mere payment of money would provide sufficient relief.” *Kaplan v. Kaplan*, 98 Ill.App.3d 136, 142 (1<sup>st</sup> Dist. 1981). In *Gibson v. Stillwell*, 149 Ill.App.3d 411, 417 (5<sup>th</sup> Dist. 1986), the Court held that “the situation presented would be one that would readily lend itself to the

remedy of an action at law, an action against the bank for damages in an amount easily determined by simple mathematical calculation.”

Court allow a party to assert a constructive trust over a particular fund of money only where the claim asserts a right to the fund itself, such as a claim against an insolvent party that asserts “a vested equitable interest in the policy proceeds” of a life insurance policy. *Johnson v. North American Life & Casualty*, 100 Ill.App.2d 212, 218-20 (5<sup>th</sup> Dist. 1968).

**B. The Complaint of the TTO**

Under the controlling law, the TTO has an adequate remedy at law – namely, a monetary judgment against LT. The declaratory judgment that the Complaint seeks only asks for “judicial confirmation” of a monetary judgment amount, and an “easy way” for the TTO to collect on the debt.

Asking the Court to issue a declaration that LT owes \$636,740.08 on the four contested invoices is not a proper claim for declaratory relief under controlling Illinois law. If the law were otherwise, any party in any case involving a monetary dispute could ask for a “declaration” that its opponent owes money; convert its Law action into a Chancery action; and seek to avoid a jury trial.

Furthermore, there is no legal justification for the TTO to seek an “easier” collection method on a monetary judgment by seeking the Court’s authorization to debit LT’s agency accounts. This would be akin to a bank seeking to collect loan payments from a customer on a disputed loan agreement, and asking the Court to issue a declaratory judgment allowing the bank to debit the amount owed on the loan from a savings account that the customer happens to maintain at the bank. Of course, any attachment of the savings account is a post-judgment remedy that would

follow the entry of monetary judgment against the customer on the loan dispute. This is especially true where, as here, the Complaint admits that LT is not and will not become insolvent.

### **Conclusion**

For the reasons set forth in this motion, the Complaint's prayer for relief should be stricken pursuant to Section 2-617, with the TTO having an opportunity to replead in order to assert an action at law.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

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### **CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on January 23, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

Barry P. Kaltenbach  
*kaltenbach@millercanfield.com*

Gerald E. Kubasiak  
*gekubasiak@quinlanfirm.com*

s/Jay R. Hoffman

## Vote To Decide Township School Trustees' Fate

November 05, 1995 | By Michael Martinez, Tribune Staff Writer.

Back in 1819, when Abe Lincoln was a mere 10-year-old boy, log cabins were commonplace and schoolhouses were only one room, the Illinois General Assembly created the offices of township school trustees and treasurer to handle school taxes.

The elected school trustees and their appointed treasurer monitored school funds and land holdings in each township, taking care of complicated finances, so local educators could concentrate on teaching.

In 1962, state lawmakers, thinking the township school positions were outmoded, abolished the offices throughout Illinois-except in suburban Cook County, where politics played a role in their preservation.

But now voters in two Cook County townships-Wheeling Township in the northwest suburbs and Leyden Township in the western suburbs-will have a chance to decide the issue on their own, as they will consider separate referendum proposals Tuesday to abolish their three-member boards of school trustees, which are volunteer posts, and their salaried treasurers.

In essence, they are being asked to cut out the middle man. Under state law, the 25 township school trustees in suburban Cook County hold the legal title to all school property located in the township, and they hire a treasurer to account for school funds, officials said.

Those urging voters to abolish the offices have the same general philosophy: Most suburban school districts now

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November 5, 1995

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have accountants and money managers to handle sophisticated financial matters on their own.

districts)

November 9, 1995

"This is very much like the buggy whip. At one time buggy whips were very useful, but they are no longer very useful," said John Ratliff, an accountant himself and a Township High School District 214 board member.

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Though identical in philosophy, the two referendums are taking place under dramatically different circumstances. In Leyden Township, a treasurer was recently sent to prison for embezzlement, whereas in Wheeling Township, a cost-cutting reform effort is at work.

The Leyden Township referendum grew from a scandal in which the former school treasurer, James Schierhorn, and his wife, Jackie, were charged with stealing \$298,950 in school funds.

Last month, James Schierhorn pleaded guilty to theft and official misconduct and was sentenced to 4 years in prison. His wife pleaded guilty to theft by deception and was placed on probation for 3 years. They have returned \$250,000 of the money.

Tuesday's referendum in Leyden Township seems to face certain approval because an advisory referendum proposal on the same issue was overwhelmingly approved last April.

"I have no idea why it exists in this county, other than it is a political entity that handles millions and millions of dollars," said Jack Schoenholtz, superintendent of Leyden High School District 212.

"These township trustees have incredible amounts of money that they are dealing with, so they have some power Downstate (in Springfield). I'm sure they get invited to a lot of things by bankers," Schoenholtz said. "From what I can see, there is not a lot of close budgetary control, and there is not a lot of supervision."

The Leyden Township trustees and treasurer handle about \$65 million a year in tax collections, and the treasurer's office costs about \$350,000 a year to operate, said Carole Orze-Ellis of Franklin Park, a township school trustee who is not seeking re-election Tuesday. No candidate is running for her seat, she said.

"I think the office should stay for one simple reason," Orze-Ellis said. "I think there were some checks and balances in the office, because the trustees were able to catch the embezzlement."

"I feel the trustees are really aware of the situation, and it could help run the treasurer's office better," Orze-Ellis said.

In Wheeling Township, Ratliff, 43, of Mt. Prospect, contends the Wheeling Township trustees of schools and their treasurer are a costly, unnecessary layer of government.

But trustees and the treasurer, who handle a total of some \$150 million in school funds, strongly disagree and say a state law would require a far more expensive alternative in which each school district would have to hire its own school treasurer, if the proposal is approved.

In response, referendum supporters said District 214 and the four elementary schools systems-Wheeling-based District 21, Prospect Heights-based District 23, Arlington Heights-based District 25 and District 26 in the River Trails area of Mt. Prospect-already have personnel on staff or a school board member who would serve as treasurer.

Also, District 214 has said it would share its treasurer with the elementary districts, Ratliff said.

"At one time, school districts were very unsophisticated and couldn't handle their school affairs," Ratliff said. "Today they are very sophisticated. They all have professional business managers."

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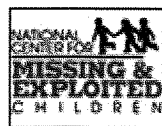
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AN ACT concerning education.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The School Code is amended by changing Section 5-1 as follows:

(105 ILCS 5/5-1) (from Ch. 122, par. 5-1)

Sec. 5-1. County school units.

(a) The territory in each county, exclusive of any school district governed by any special act which requires the district to appoint its own school treasurer, shall constitute a county school unit. County school units of less than 2,000,000 inhabitants shall be known as Class I county school units and the office of township trustees, where existing on July 1, 1962, in such units shall be abolished on that date and all books and records of such former township trustees shall be forthwith thereafter transferred to the county board of school trustees. County school units of 2,000,000 or more inhabitants shall be known as Class II county school units and shall retain the office of township trustees unless otherwise provided in subsection (b) or (c).

(b) Notwithstanding subsections (a) and (c), the school board of any elementary school district having a fall, 1989 aggregate enrollment of at least 2,500 but less than 6,500 pupils and having boundaries that are coterminous with the boundaries of a high school district, and the school board of any high school district having a fall, 1989 aggregate enrollment of at least 2,500 but less than 6,500 pupils and having boundaries that are coterminous with the boundaries of an elementary school district, may, whenever the territory of such school district forms a part of a Class II county school unit, by proper resolution withdraw such school district from the jurisdiction and authority of the trustees of schools of the township in which such school district is located and from the jurisdiction and authority of the township treasurer in such Class II county school unit; provided that the school board of any such school district shall, upon the adoption and passage of such resolution, thereupon elect or appoint its own school treasurer as provided in Section 8-1. Upon the adoption and passage of such resolution and the election or appointment by the school board of its own school treasurer: (1) the trustees of schools in such township shall no longer have or

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exercise any powers and duties with respect to the school district governed by such school board or with respect to the school business, operations or assets of such school district; and (2) all books and records of the township trustees relating to the school business and affairs of such school district shall be transferred and delivered to the school board of such school district. Upon the effective date of this amendatory Act of 1993, the legal title to, and all right, title and interest formerly held by the township trustees in any school buildings and school sites used and occupied by the school board of such school district for school purposes, that legal title, right, title and interest thereafter having been transferred to and vested in the regional board of school trustees under P.A. 87-473 until the abolition of that regional board of school trustees by P.A. 87-969, shall be deemed transferred by operation of law to and shall vest in the school board of that school district.

Notwithstanding subsections (a) and (c), the school boards of Oak Park & River Forest District 200, Oak Park Elementary School District 97, and River Forest School District 90 may, by proper resolution, withdraw from the jurisdiction and authority of the trustees of schools of Proviso and Cicero Townships and the township treasurer, provided that the school board shall, upon the adoption and passage of the resolution, elect or appoint its own school treasurer as provided in Section 8-1 of this Code. Upon the adoption and passage of the resolution and the election or appointment by the school board of its own school treasurer: (1) the trustees of schools in the township or townships shall no longer have or exercise any powers or duties with respect to the school district or with respect to the school business, operations, or assets of the school district; (2) all books and records of the trustees of schools and all moneys, securities, loanable funds, and other assets relating to the school business and affairs of the school district shall be transferred and delivered to the school board; and (3) all legal title to and all right, title, and interest formerly held by the trustees of schools in any common school lands, school buildings, or school sites used and occupied by the school board and all rights of property and causes of action pertaining to or constituting a part of the common school lands, buildings, or sites shall be deemed transferred by operation of law to and shall vest in the school board.

Notwithstanding subsections (a) and (c), the respective school boards of Berwyn North School District 98, Berwyn South School District 100, Cicero School District 99, and J.S. Morton High School District 201 may, by proper resolution, withdraw from the jurisdiction and authority of the trustees of schools of Cicero Township and the township treasurer, provided that the school board shall, upon the adoption and passage of the resolution, elect or appoint its own school treasurer as provided in Section 8-1 of this Code. Upon the adoption and passage of the resolution and the election or appointment by the school board of its own school treasurer: (1) the trustees of schools in the township shall no longer have or exercise any powers or duties with respect to the school district or with respect to the school business, operations, or assets of the school district; (2) all books and records of the trustees of schools and all moneys, securities, loanable funds, and other assets relating to the school business and affairs of the school district shall be transferred and delivered to the school board; and (3) all legal title to and all right, title, and interest formerly held by the trustees of schools in any common school lands, school buildings, or school sites used and

occupied by the school board and all rights of property and causes of action pertaining to or constituting a part of the common school lands, buildings, or sites shall be deemed transferred by operation of law to and shall vest in the school board.

Notwithstanding subsections (a) and (c) of this Section and upon final judgment, including the exhaustion of all appeals or a settlement between all parties, regarding claims set forth in the case of Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District No. 204 case N. 13 CH 23386 pending in 2018 in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, and all related pending claims, the school board of Lyons Township High School District 204 may commence, by proper resolution, to withdraw from the jurisdiction and authority of the trustees of schools of Lyons Township and the township treasurer, provided that the school board shall, upon the adoption and passage of the resolution, elect or appoint its own school treasurer as provided in Section 8-1 of this Code. Upon the adoption and passage of the resolution and the election or appointment by the school board of its own school treasurer commencing with the first day of the succeeding fiscal year, but not prior to July 1, 2019: (1) the trustees of schools in the township shall no longer have or exercise any powers or duties with respect to the school district or with respect to the school business, operations, or assets of the school district; (2) all books and records of the trustees of schools and all moneys, securities, loanable funds, and other assets relating to the school business and affairs of the school district shall be transferred and delivered to the school board, allowing for a reasonable period of time not to exceed 90 days to liquidate any pooled investments; and (3) all legal title to and all right, title, and interest formerly held by the trustees of schools in any common school lands, school buildings, or school sites used and occupied by the school board and all rights of property and causes of action pertaining to or constituting a part of the common school lands, buildings, or sites shall be deemed transferred by operation of law to and shall vest in the school board. The changes made to this Section by this amendatory Act of the 100th General Assembly are prospective only, starting from the effective date of this amendatory Act of the 100th General Assembly, and shall not affect any legal action pending on the effective date of this amendatory Act of the 100th General Assembly in the Illinois courts in which Lyons Township High School District 204 is a listed party.

(c) Notwithstanding the provisions of subsection (a), the offices of township treasurer and trustee of schools of any township located in a Class II county school unit shall be abolished as provided in this subsection if all of the following conditions are met:

(1) During the same 30 day period, each school board of each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished gives written notice by certified mail, return receipt requested to the township treasurer and trustees of schools of that township of the date of a meeting of the school board, to be held not more than 90 nor less than 60 days after the date when the notice is given, at which meeting the school board is to consider and vote upon the question of whether there shall be submitted to the electors of the school district a proposition to abolish the offices of township treasurer

and trustee of schools of that township. None of the notices given under this paragraph to the township treasurer and trustees of schools of a township shall be deemed sufficient or in compliance with the requirements of this paragraph unless all of those notices are given within the same 30 day period.

(2) Each school board of each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished, by the affirmative vote of at least 5 members of the school board at a school board meeting of which notice is given as required by paragraph (1) of this subsection, adopts a resolution requiring the secretary of the school board to certify to the proper election authorities for submission to the electors of the school district at the next consolidated election in accordance with the general election law a proposition to abolish the offices of township treasurer and trustee of schools of that township. None of the resolutions adopted under this paragraph by any elementary or unit school districts that are subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished shall be deemed in compliance with the requirements of this paragraph or sufficient to authorize submission of the proposition to abolish those offices to a referendum of the electors in any such school district unless all of the school boards of all of the elementary and unit school districts that are subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township adopt such a resolution in accordance with the provisions of this paragraph.

(3) The school boards of all of the elementary and unit school districts that are subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished submit a proposition to abolish the offices of township treasurer and trustee of schools of that township to the electors of their respective school districts at the same consolidated election in accordance with the general election law, the ballot in each such district to be in substantially the following form:

-----  
OFFICIAL BALLOT

Shall the offices of township	
treasurer and	YES
trustee of	-----
schools of Township .....	NO
Range ..... be abolished?	

-----

(4) At the consolidated election at which the proposition to abolish the offices of township treasurer and trustee of schools of a township is submitted to the electors of each elementary and unit school district that is subject to the jurisdiction and authority of the township treasurer and trustee of schools of that township, a majority of the electors voting on the proposition in each such elementary and unit school district votes in favor of the proposition as submitted to them. If in each elementary and unit school district that is

subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished a majority of the electors in each such district voting at the consolidated election on the proposition to abolish the offices of township treasurer and trustee of schools of that township votes in favor of the proposition as submitted to them, the proposition shall be deemed to have passed; but if in any such elementary or unit school district a majority of the electors voting on that proposition in that district fails to vote in favor of the proposition as submitted to them, then notwithstanding the vote of the electors in any other such elementary or unit school district on that proposition the proposition shall not be deemed to have passed in any of those elementary or unit school districts, and the offices of township treasurer and trustee of schools of the township in which those offices were sought to be abolished shall not be abolished, unless in each of those elementary and unit school districts remaining subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township proceedings are again initiated to abolish those offices and all of the proceedings and conditions prescribed in paragraphs (1) through (4) of this subsection are repeated and met in each of those elementary and unit school districts.

Notwithstanding the foregoing provisions of this Section or any other provision of the School Code, the offices of township treasurer and trustee of schools of a township that has a population of less than 200,000 and that contains a unit school district and is located in a Class II county school unit shall also be abolished as provided in this subsection if all of the conditions set forth in paragraphs (1), (2), and (3) of this subsection are met and if the following additional condition is met:

The electors in all of the school districts subject to the jurisdiction and authority of the township treasurer and trustees of schools of the township in which those offices are sought to be abolished shall vote at the consolidated election on the proposition to abolish the offices of township treasurer and trustee of schools of that township. If a majority of the electors in all of the school districts combined voting on the proposition vote in favor of the proposition, then the proposition shall be deemed to have passed; but if a majority of the electors voting on the proposition in all of the school district fails to vote in favor of the proposition as submitted to them, then the proposition shall not be deemed to have passed and the offices of township treasurer and trustee of schools of the township in which those offices were sought to be abolished shall not be abolished, unless and until the proceedings detailed in paragraphs (1) through (3) of this subsection and the conditions set forth in this paragraph are met.

If the proposition to abolish the offices of township treasurer and trustee of schools of a township is deemed to have passed at the consolidated election as provided in this subsection, those offices shall be deemed abolished by operation of law effective on January 1 of the calendar year immediately following the calendar year in which that consolidated election is held, provided that if after the election, the trustees of schools by resolution elect to abolish the offices of township treasurer and trustee of schools effective on July 1 immediately following the election, then the offices shall be abolished on July 1 immediately

following the election. On the date that the offices of township treasurer and trustee of schools of a township are deemed abolished by operation of law, the school board of each elementary and unit school district and the school board of each high school district that is subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township at the time those offices are abolished: (i) shall appoint its own school treasurer as provided in Section 8-1; and (ii) unless the term of the contract of a township treasurer expires on the date that the office of township treasurer is abolished, shall pay to the former township treasurer its proportionate share of any aggregate compensation that, were the office of township treasurer not abolished at that time, would have been payable to the former township treasurer after that date over the remainder of the term of the contract of the former township treasurer that began prior to but ends after that date. In addition, on the date that the offices of township treasurer and trustee of schools of a township are deemed abolished as provided in this subsection, the school board of each elementary school, high school and unit school district that until that date is subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township shall be deemed by operation of law to have agreed and assumed to pay and, when determined, shall pay to the Illinois Municipal Retirement Fund a proportionate share of the unfunded liability existing in that Fund at the time these offices are abolished in that calendar year for all annuities or other benefits then or thereafter to become payable from that Fund with respect to all periods of service performed prior to that date as a participating employee in that Fund by persons serving during those periods of service as a trustee of schools, township treasurer or regular employee in the office of the township treasurer of that township. That unfunded liability shall be actuarially determined by the board of trustees of the Illinois Municipal Retirement Fund, and the board of trustees shall thereupon notify each school board required to pay a proportionate share of that unfunded liability of the aggregate amount of the unfunded liability so determined. The amount so paid to the Illinois Municipal Retirement Fund by each of those school districts shall be credited to the account of the township in that Fund. For each elementary school, high school and unit school district under the jurisdiction and authority of a township treasurer and trustees of schools of a township in which those offices are abolished as provided in this subsection, each such district's proportionate share of the aggregate compensation payable to the former township treasurer as provided in this paragraph and each such district's proportionate share of the aggregate amount of the unfunded liability payable to the Illinois Municipal Retirement Fund as provided in this paragraph shall be computed in accordance with the ratio that the number of pupils in average daily attendance in each such district for the school year last ending prior to the date on which the offices of township treasurer and trustee of schools of that township are abolished bears to the aggregate number of pupils in average daily attendance in all of those districts as so reported for that school year.

Upon abolition of the offices of township treasurer and trustee of schools of a township as provided in this subsection: (i) the regional board of school trustees, in its corporate capacity, shall be deemed the successor in interest to the former trustees of schools of that township with respect to the common school lands and township loanable funds of the township; (ii) all right, title and interest existing or vested



in the former trustees of schools of that township in the common school lands and township loanable funds of the township, and all records, moneys, securities and other assets, rights of property and causes of action pertaining to or constituting a part of those common school lands or township loanable funds, shall be transferred to and deemed vested by operation of law in the regional board of school trustees, which shall hold legal title to, manage and operate all common school lands and township loanable funds of the township, receive the rents, issues and profits therefrom, and have and exercise with respect thereto the same powers and duties as are provided by this Code to be exercised by regional boards of school trustees when acting as township land commissioners in counties having at least 220,000 but fewer than 2,000,000 inhabitants; (iii) the regional board of school trustees shall select to serve as its treasurer with respect to the common school lands and township loanable funds of the township a person from time to time also serving as the appointed school treasurer of any school district that was subject to the jurisdiction and authority of the township treasurer and trustees of schools of that township at the time those offices were abolished, and the person selected to also serve as treasurer of the regional board of school trustees shall have his compensation for services in that capacity fixed by the regional board of school trustees, to be paid from the township loanable funds, and shall make to the regional board of school trustees the reports required to be made by treasurers of township land commissioners, give bond as required by treasurers of township land commissioners, and perform the duties and exercise the powers of treasurers of township land commissioners; (iv) the regional board of school trustees shall designate in the manner provided by Section 8-7, insofar as applicable, a depository for its treasurer, and the proceeds of all rents, issues and profits from the common school lands and township loanable funds of that township shall be deposited and held in the account maintained for those purposes with that depository and shall be expended and distributed therefrom as provided in Section 15-24 and other applicable provisions of this Code; and (v) whenever there is vested in the trustees of schools of a township at the time that office is abolished under this subsection the legal title to any school buildings or school sites used or occupied for school purposes by any elementary school, high school or unit school district subject to the jurisdiction and authority of those trustees of school at the time that office is abolished, the legal title to those school buildings and school sites shall be deemed transferred by operation of law to and invested in the school board of that school district, in its corporate capacity under Section 10-22.35B of this Code, the same to be held, sold, exchanged leased or otherwise transferred in accordance with applicable provisions of this Code.

Notwithstanding Section 2-3.25g of this Code, a waiver of a mandate established under this Section may not be requested. (Source: P.A. 100-374, eff. 8-25-17.)

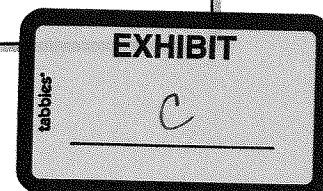
Section 99. Effective date. This Act takes effect upon becoming law.

**Effective Date:** 8/17/2018

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

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12	)	
EAST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 13 CH 23386
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	
DISTRICT 204,	)	
	)	
Defendant.	)	

The deposition of MICHAEL THEISSEN taken before Loretta A. Tyska, Certified Shorthand Reporter, taken pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 20 North Clark Street, Suite 2500, Chicago, Illinois, commencing at 1:04 p.m. on the 16th day of February, 2017.



1 roughly June of one of those two years, if I  
2 remember correctly.

3 Q. Was it before or after Bob Healy resigned  
4 as treasurer?

5 A. It was before, probably six weeks before,  
6 six to seven weeks before. Bob Healy resigned on  
7 Labor Day weekend. I remember that.

8 Q. If I tell you that Bob Healy resigned in  
9 2012, does that mean he started in the middle of  
10 2012 as a board member?

11 A. Yes, that would be correct.

12 Q. You're aware that Bob Healy stole from --  
13 Well, you're aware that Bob Healy stole in excess of  
14 a million dollars in his position as treasurer,  
15 correct?

16 A. Yes.

17 Q. And were the funds that he stole funds  
18 that TTO held for the districts that are members of  
19 the TTO?

20 A. I'm not really sure what you're asking  
21 because we have operational funds and then we have  
22 funds that we manage on their behalf, so are you  
23 asking me to make a differentiation or are you going  
24 to make a differentiation? We have agency funds

1 which we manage on their behalf. You know, for a  
2 nonaccounting people, we may be our -- not one of  
3 those, but for me, those would be like rainy day  
4 funds or surplus funds. And we have operational  
5 funds. So I don't know. If you want to ask me that  
6 again, I'll try to answer it.

7 Q. The TTO doesn't have any revenue sources  
8 of its own, does it, other than its billings from  
9 the other districts? Where does the TTO get its  
10 money?

11 A. We bill the other districts, correct. We  
12 don't have tax --

13 Q. You don't get tax money, right?

14 A. No, we do not. We get tax money  
15 indirectly via what we bill the other districts.

16 Q. Okay. So the money that the TTO has is  
17 money that it holds in trust for other districts,  
18 and sometimes it uses that money for the operation  
19 of the TTO, correct?

20 A. Well, that's a function of -- the money  
21 that comes in is a delay because of cash flow and  
22 billing, so, again, I'm not --

23 Q. Let me ask you a better question.

24 A. Okay.

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

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

Plaintiff,

vs.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204,

Defendant.

No.

2018CH08263

CALENDAR/ROOM 07

TIME 00:00

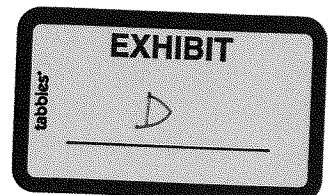
Declaratory Judgment

COMPLAINT

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, by its undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for its Complaint for Declaratory Relief against the defendant, Lyons Township High School District 204, states as follows:

Nature of the Case

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share – except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant's refusal.



Highlands School District 106, Pleasantdale School District 107, Willow Springs School District 108, Indian Springs School District 109, and Argo Community High School District 217.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

#### **How the Treasurer's Office is Funded**

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, *e.g.*, leased offices, staff salaries, and office supplies. 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.” 105 ILCS 5/8-4 (emphasis added).

11. Each district’s proportionate 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.” 105 ILCS 5/8-4.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer’s costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer’s costs.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent. District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

**The Trustees Seek a Declaratory Judgment to Permit Payment**

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

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

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

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. Sophia H. Hall  
Calendar 14

**VERIFIED AMENDED COMPLAINT FOR DECLARATORY RELIEF**

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

**THE PARTIES, JURISDICTION AND VENUE**

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

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

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





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

**THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT**

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

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

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

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

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

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

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

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

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

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

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

VERIFICATION

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

Dated: 10-21-14

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

Michael Thiessen, on behalf of Plaintiff

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

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

Plaintiff,

vs.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT NO. 204

Defendants

)  
)  
)  
) --No. 13 CH 23386  
)  
) 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 October 24, 2014, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **Verified Amended Complaint for Declaratory Relief**, 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.

Gerald E. Kubasiak  
Barry P. Kaltenbach  
Gretchen M. Kubasiak  
KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.  
20 South Clark Street, 29<sup>th</sup> Floor  
Chicago, Illinois 60603  
(312) 630-9600 (Phone)  
(312) 630-7939 (Fax)  
Firm No. 48237

**PROOF OF SERVICE**

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

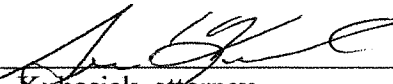
**Verified Amended Complaint for Declaratory Relief**

has been served upon:

Charles A. LeMoine  
[clemoine@dykema.com](mailto:clemoine@dykema.com)  
Rosa A. Tumialán  
[rtumialan@dykema.com](mailto:rtumialan@dykema.com)  
Stephen M. Mahieu  
[smahieu@dykema.com](mailto:smahieu@dykema.com)  
Dykema Gossett PLLC  
10 S. Wacker Drive, Suite 2300  
Chicago, IL 60606

as follows:

- ☐ by personal service on October 24, 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 October 24, 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 October 24, 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 October 24, 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 October 24, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.

  
\_\_\_\_\_  
Gerald E. Kubasiak, attorney

Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
12/13/2018 4:26 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08263

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

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

Plaintiff,

vs.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204,

Defendant.

No. 18 CH 8263

Calendar 07

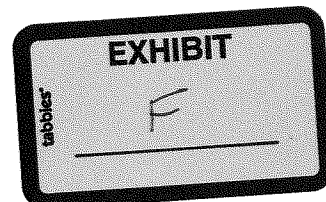
Judge Diane J. Larsen

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO  
TRANSFER TO LAW DIVISION BASED ON JURY DEMAND**

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (the "Trustees"), by their undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for their Response to the Motion to Transfer to Law Division Based Upon Jury Demand (the "Motion") filed by the Defendant, Lyons Township High School District 204, states as follows:

**I. Introduction**

Defendant's Motion should be denied because the Motion contains no argument or analysis as to *whether* the Defendant is entitled to a jury. Rather, the Defendant assumes that because it has made a jury demand, this matter should be transferred to the Law Division. Defendant's filing of a jury demand, however, does not create the right to a jury trial – that right is conferred by the Illinois Constitution and an analysis of whether Defendant is entitled to a jury must be undertaken in light of its language. Defendant omits such analysis in its Motion.



## II. The Claims Raised in the Pleadings

The Trustees are elected officials who comprise a body politic and, as mandated by the Illinois School Code, appoint the Lyons Township School Treasurer (the "Treasurer"). The Treasurer services eleven (11) school districts and two (2) further educational bodies within Lyons Township, of which the Defendant is one. The Trustees and Treasurer do not have a tax base, but the School Code affords the Treasurer a salary and the Treasurer has expenses; and so the School Code mandates that, to pay for these items, the Treasurer shall invoice the school districts within Lyons Township for their proportionate share of those costs. The School Code also mandates that the districts "shall" pay for these costs. 105 ILCS 5/8-4.

At the end of each fiscal year, the Treasurer totals his costs and sends each district an invoice for that district's proportionate share. The Defendant is the only district who refuses to pay the invoices in full and the shortfall for fiscal years 2014 through 2017 is \$636,740.08. The Trustees, therefore, filed this action seeking declaratory relief authorizing the Treasurer to debit \$636,740.08 from the nearly \$50,000,000 the Treasurer currently holds for the Defendant. A copy of the Complaint is attached as Exhibit 1.

The Defendant filed an Answer and an Affirmative Defense. (See Exhibit 2.) In gist, the Defendant contends that it does not have to pay the monies in question because they constitute legal fees incurred in connection with other litigation between the parties. The Defendant contends that the School Code (or perhaps some other aspect of Illinois law) does not permit the Treasurer to include these legal fees on its annual invoices; the Trustees contends otherwise. The issue of whether these legal fees are properly included on the invoices is purely a legal one that will require this Court to construe the School Code.



The Defendant also filed a Counterclaim in which the Defendant asserts various violations of the School Code. In Count I of the Counterclaim, Defendant seeks monetary damages for an alleged violation of the School Code; in Counts II and III the Defendant requests that this Court enter declaratory relief respecting the parties' rights under the School Code; and in Count IV the Defendant asserts a claim for breach of fiduciary duty based, at least in part, upon the School Code. The Counterclaim is part of Exhibit 2. The Trustees have filed a Motion to Dismiss the Counterclaim on the basis that the School Code does not afford the Defendant a private right of action. That Motion remains pending.

### **III. Defendant's Jury Demand**

The Defendant filed a jury demand. The Trustees have no issues with the Defendant *demanding* a jury – but the fact that the Defendant demanded a jury does not create the right to a jury. That right, rather, derives from the Illinois Constitution, which provides only the right to a jury trial “as it existed in common law actions when the constitution was adopted.” *Berk v. Will County*, 34 Ill. 2d 588, 591 (1966).

Defendant argues that “the [Trustees] did not raise any objection to [Defendant's] jury demand.” (Motion at 2.) It seems that Defendant is implying that by not (yet) objecting to the jury demand the Trustees have waived their right to do so. Defendant, however, cites to no provision in the Code of Civil Procedure, the Supreme Court Rules, this Court's Local Rules or General Orders, or any other source of law in support of its implicit argument that the Trustees were required to object to the jury demand in any particular manner or at any particular time.

In one of the few cases to address this issue, *St. George Chicago, Inc. v. George J. Murges & Assocs.*, the Appellate Court held that a party waived its right to object to a jury demand when the objection was not raised until “the day of trial, over three years after the

demand was filed, and after the court spent several weeks considering motions *in limine*.” 269 Ill. App. 3d 28\_, 294 (1st Dist. 1998). *See also Grant Park Commodities LLC v. Attefford*, 2017 IL App (1st) 161277-U, ¶¶ 36-38 (objection to jury demand must be made “in advance of trial”); *Hareas v. Herman*, No. 1-10-1439, 2010 WL 9115642, at \*4 (1st Dist. May 17, 2010) (objection untimely when not made until post-trial motions).<sup>1</sup> The Trustees are under no obligation to “object” to the Defendant’s jury demand within any particular timeframe, so long as they do so in advance of trial. Given the instant Motion, however, the Trustees hereby give notice that they object to the jury demand to the extent the Defendant asserts the right to a jury trial that is not permitted by the Constitution.

#### **IV. Defendant Does Not Have a Constitutional Right to a Jury Trial**

As a baseline, there is “no constitutional right of trial by jury in equity.” *Berk*, 34 Ill. 2d at 591. Declaratory judgment actions can present mixed issues of law and equity, of course, and so where a party seeks only declaratory relief – as the Trustees do here – the right to a jury trial “must be determined by an examination of the disputed issues and an appraisal of their predominant characteristics....” *Id.*

The Trustees’ Complaint presents a legal issue for this Court – whether under the School Code the legal fees in question are properly included on the Treasurer’s annual invoices. Defendant has not offered any other basis for refusing to pay the invoices and, even if some factual issue existed, the presence of a factual dispute would not automatically confer upon Defendant the right to a jury trial: “the mere fact that there is an issue of fact [does not] create a right to jury trial.” *Id.* at 591. The predominant nature of Plaintiff’s action is construction of the

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<sup>1</sup> *Grant Park Commodities* and *Hareas* are unpublished opinions. Because of the (perhaps unsurprising) dearth of case law on this subject, the Trustees bring them to this Court’s attention mindful of the fact that they are not considered as precedent.

Illinois School Code; on this basis Defendant has no right to a jury trial on the Complaint. *Id*; see also *Zurich Ins. Co. v. Raymark Indus., Inc.*, 118 Ill. 2d 23, 57-58 (1987) (affirming no right to jury trial where predominate nature of claim was to construe a contract).

Based on the claims Defendant currently asserts in the Counterclaim there is also no right to a jury trial. In Count I, Defendant seeks monetary damages for an alleged violation of the School Code and Defendant cites no legal authority to support a right to a jury on such a claim. Counts II and III request declaratory relief wherein the Defendant requests this Court construe the School Code – for the reasons stated above, no right to a jury trial would exist for such claims. Finally, in Count IV, the Defendant asserts a claim for breach of fiduciary duty, but there is no right to a jury trial for fiduciary claims. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 111.

Moreover, the Trustees have moved to dismiss the entirety of that Counterclaim on the basis that the School Code does not afford Defendants a private right of action. If the Motion to Dismiss is granted the issue of whether there is a right to a jury on the Counterclaim is moot. The judicially economic route is to wait until the Motion to Dismiss is decided before determining whether or not there exists a right to a jury trial on the issues raised by the Counterclaim. In the event this Court wishes to decide the matter now, however, this Court should then deny Defendant's Motion.

### III. CONCLUSION

For these reasons, the Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, respectfully requests that this Court deny the Motion to Transfer to Law Division Based on Jury Demand filed by the Defendant.

Respectfully submitted,

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

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

Gerald E. Kubasiak  
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Barry P. Kaltenbach  
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Chicago, Illinois 60606  
(312) 460-4200  
Firm No. 44233

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## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

LYONS TOWNSHIP TRUSTEES  
OF SCHOOLS

v.

LYONS TOWNSHIP HIGH  
SCHOOL # 204

No. 18 CH 8263

## ORDER

This matter coming to be heard at  
Plaintiff's motion to issue a protective  
order, ~~and~~ it is hereby ordered

- ① defendant shall respond to the motion for a protective order by 12-21-18; Plaintiff will not file a written reply
- ② the hearing for the motion for a protective order shall be on 1-4-19 @ 10:30am at the time set for defendant's motion to transfer to the Law Division
- ③ defendant's motion to transfer to the Law Division is withdrawn without prejudice, and defendant may refile this motion at a later date

Attorney No.: 44233

Name: BARRY KALTENBACH

Atty. for: PLAINTIFF

Address: 225 W. WASHINGTON #2600

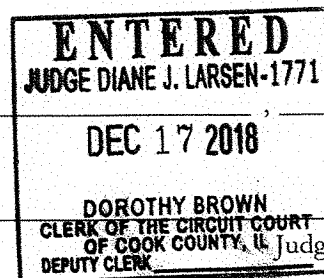
City/State/Zip: CHICAGO IL 60606

Telephone: 312-460-4200

ENTERED:

Dated: \_\_\_\_\_

Judge \_\_\_\_\_



Judge's No. \_\_\_\_\_

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

