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Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

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COOK COUNTY, IL  
2013CH23386

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

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

**NOTICE OF MOTION**

Please take notice that on February 14, 2018, at 9:30 a.m., we shall appear before the Honorable Sophia H. Hall in Courtroom 2301 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois, and present the attached motion.

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

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Attorney No. 34710

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TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff and Counter-Defendant,	)	No. 13 CH 23386
	)	
v.	)	Hon. Sophia H. Hall
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Calendar 14
DISTRICT 204,	)	
	)	
Defendant and Counter-Plaintiff.	)	

**LT'S MOTION TO STRIKE THE PRAYER FOR RELIEF IN THE  
TTO'S AMENDED 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 Amended Complaint ("the Complaint") of Plaintiff Lyons Township Trustees Of Schools Township 38 North, Range 12 East ("the TTO").

The TTO's prayer for relief is improper because the TTO has an adequate remedy at law in monetary damages, and therefore may not seek declaratory relief. This Section 2-617 motion may be filed at any time during a case, even at the close of a trial.

LT views this motion as a first step toward filing a formal motion to transfer this case to the Law Division for jury trial once summary judgment proceedings are completed. Although this Court previously stated its intention to transfer this case to the Law Division, the TTO recently filed a pleading in another case involving the same parties that indicated that the TTO opposes a transfer, and that it objects to a jury trial based on its prayer for declaratory relief. Thus, LT believes this motion should proceed any discussion concerning a transfer.

In the Complaint in this case, the TTO appears to accuse LT of three alleged violations of the Illinois School Code: (1) that LT allegedly failed to pay in full certain invoices that the TTO sent to LT; (2) that the TTO wrongly paid too much investment income to LT; and (c) that the TTO wrongly paid LT's annual audit expenses in certain years. While the TTO styled the Complaint as a claim for declaratory relief, the declaratory relief that the TTO seeks essentially is a series of "declarations" that (a) LT owes the TTO the amounts of \$2,628,807, \$1,574,636.77, and \$511,068.60, for the three TTO claims (for a total of \$4,714,512.37); and (b) that the TTO may collect its damages by taking money from LT's agency accounts that the TTO holds for LT.

Because the TTO has an adequate remedy at law – namely, an award of monetary damages against LT – the TTO's prayer for declaratory relief in the Complaint should be stricken. There is no need in this case for any award of declaratory relief.

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

LT is a public high school operating in suburban Cook County. The TTO is a township trustees of schools. TTOs 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. Pursuant to legislation enacted on August 17, 2018, LT 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.)

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 A, p. 7-8.)

The Complaint in this case states that the TTO maintains “Agency Accounts’ at local banks.” (Complaint, Exhibit B, ¶ 20.) The TTO has no authority to authorize the disbursement of LT’s agency funds. The Complaint admits that the School Code obligates the TTO to make payments from an agency account of a school district only upon a “a lawful instruction to the Treasurer to issue payment” from that district. (*Id.* ¶ 21.)

### **The Procedural History**

In 2013, the TTO filed the present case. In 2017, the TTO attempted to amend its complaint in this case by adding additional claims. This Court refused to allow the amendment because fact and expert discovery had closed, and the parties were proceeding to summary judgment motions. At several Court appearances in recent years, this Court indicated that it intends to transfer this case to the Law Division for a jury trial after all summary judgment motions are resolved.

There is no dispute that LT filed a timely jury demand in this case. To be clear, LT does not contend that the TTO waived its right to object to a future transfer to the Law Division by failing to say so at our prior court appearances. Currently, the parties are awaiting a ruling on the TTO’s motion for summary judgment on the TTO claims in this case.

In 2018, the TTO filed a second case in the Chancery Division against LT (“the Second Case”). These are the additional claims the TTO tried to add to the current case. As with the Complaint in this case, the TTO’s complaint in the Second Case seeks a declaratory judgment in the form of a “declaration” that it is entitled to a fixed amount of money, and a “declaration” that it can take that money from LT’s agency accounts.

In the Second Case, LT filed an answer, affirmative defense, counterclaim, and jury demand. In November 2018, LT filed a short motion to transfer the Second Case to the Law

Division for eventual jury trial. LT expected that this motion would be unopposed, in light of the earlier proceedings in the present case. However, the TTO – as was its right – objected to the transfer of the Second Case. The TTO argued, in part, that LT has no right to a jury trial under legal authority that governs claims for declaratory relief. LT withdrew its motion to transfer without prejudice, and recently filed a motion to strike the TTO’s prayer for relief in the complaint in the Second Case. That motion is pending.

Based on these proceedings in the 2018 case, LT expects that the TTO now will object to the transfer to the Law Division of this case, as well. LT will file a motion to transfer once the TTO’s summary judgment motion and this motion are resolved.

### 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.*, as Section 2-615 motions 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 for a Section 2-617 motion 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 *Givot v. Orr*, 321 Ill.App.3d 78, 85 (1<sup>st</sup> Dist. 2001), the Court – in an analysis concerning “equitable relief” – ruled that because the plaintiffs had “an adequate remedy at law, plaintiffs are not entitled to the declaratory relief they seek.”

Courts in Illinois consistently have 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). For example, 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.”

Courts 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 TTO'S Complaint**

Under controlling Illinois law, the TTO has an adequate remedy at law – namely, a monetary judgment against LT. The declaratory judgment that the Complaint seeks really is for “judicial confirmation” of a three-part monetary judgment amount, and an “easy way” for the TTO to collect these monetary amounts from LT. The present case concerns monetary claims based on events that ended in 2012, and the TTO does not seek any forward-going relief from LT.

The TTO's request that this Court issue a declaration that LT owes a total of \$4,714,512.37 to the TTO 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 it money; convert its Law action into a Chancery action; and seek to avoid a jury trial. Likewise, the TTO asking for a “declaration” that LT violated the School Code during a time period that ended in 2012 is no different than asking for a “declaration” that a party breached a contract, and therefore owes money damages.

Furthermore, there is no legal justification for the TTO to seek an “easier” collection method on a money judgment by seeking the Court's authorization to debit LT's agency accounts. The TTO has no legal justification for this request. This request is akin to a bank seeking to collect an unpaid loan from a customer – and asking the Court to issue a declaratory judgment allowing the bank to debit the loan amount from a savings account that the customer happens to maintain at the bank. In that scenario, any attachment of the savings account to satisfy the loan is a post-judgment remedy. Any attachment necessarily would follow the entry of a money judgment against the customer on the loan dispute. This is especially true where, as here, there is no claim that LT is or will 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, and the TTO should be permitted to pursue a remedy at law.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

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(312) 899-0899  
*jay@hoffmanlegal.com*  
Attorney No. 34710

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on February 8, 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*

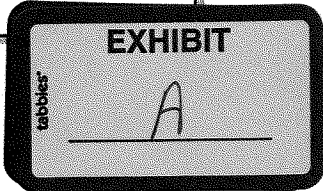
s/Jay R. Hoffman



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
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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.



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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.

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EAST, )

Plaintiff, )

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204, )

Defendant. )

No. 13 CH 23386

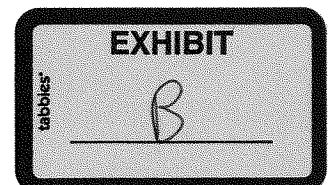
Hon. Sophia H. Hall  
Calendar 14

**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 Treasurer to issue payment, the Treasurer effectuates the payment drawing on the appropriate Agency Account.

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

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

**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;

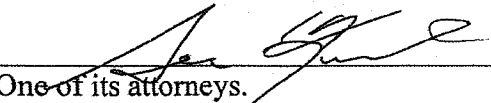
F. District 204 is obligated to pay \$511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that District 204 performed and that was paid by the Treasurer from the Treasurer's General Fund;

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.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By:   
One of its attorneys.

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Firm No. 48237

Service by e-mail will be accepted.



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



Michael Thiessen, on behalf of Plaintiff