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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
Plaintiff and Counter-Defendant,	)	No. 13 CH 23386
v.	)	Hon. Thomas M. Mulroy
LYONS TOWNSHIP H.S. DISTRICT 204,	)	Calendar I
Defendant and Counter-Plaintiff.	)	(Transferred to Law)

DEFENDANT LT'S MOTION FOR RECONSIDERATION OF LT'S PARTIAL SUMMARY JUDGMENT MOTION ON THE STATUTE OF LIMITATIONS ISSUE

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Defendant Lyons Township High School District 204 ("LT"), pursuant to 735 ILCS 5/2-1005(d), respectfully asks this Court to reconsider Judge Sophia Hall's ruling on LT's motion for partial summary judgment on its statute of limitations affirmative defense. LT asked Judge Hall to rule that the 5-year catch-all statute of limitations (735 ILCS 5/13-205) applies to all three of the financial and accounting claims of Plaintiff Township Trustees Of Schools ("the TTO"). The application of this limitations period would reduce the TTO's total claims, which stretch back to 1993, from $4.6 to $1.3 million, and eliminate one TTO claim and the need for experts.

The TTO cross-moved for summary judgment, and asked the Court to rule that the TTO's claims were exempt from the statute of limitations under two separate legal theories. Judge Hall decided that she could not resolve the limitations issue on summary judgment due to the existence of disputed factual issues. LT respectfully asks this Court to reconsider Judge Hall's ruling because she committed error in finding the existence of disputed issues of material fact, especially where both parties agreed the issue was ripe for resolution.

I. SUMMARY OF ARGUMENT

The TTO's Amended Complaint contains three claims, all of which concern financial dealings between the parties from 1993-2012. LT has the burden of identifying the applicable statute of limitations, and proving which portions of the TTO's claims are time barred. The burden of proof switches to the TTO to prove that its claims are exempt from the statute of limitations. There is no dispute that the TTO's claims are founded on provisions of the Illinois School Code; that neither the School Code nor the Code of Civil Procedure have a specific limitations period for these types of claims; and that the 5-year catch-all provision is the applicable statute.

The TTO contends that its claims are exempt from limitations under the "public rights" exception. This exception depends on the nature of the claim involved. The exception does not

exempt the claims of all government units, nor does it exempt all attempts to recover public funds. Rather, this exception allies to claims that involve critical rights of the general public, such as public safety and public health issues, and that involve remedial actions mandated by statute and further expenditures of public funds. It does not apply to claims of government units that address purely financial or accounting issues, which are more like private business claims.

Second, the TTO contends that its claims are exempt from limitations because its claims involve disputes over public money that the TTO holds in trust. The public trust exception depends on the nature of the funds and accounts at issue. The held in trust exception applies only to expressly established trust accounts, and it does not apply to agency accounts like the account that LT maintains at the TTO, from which only LT can authorize spending.

II. JUDGE HALL'S RULING ON THE LIMITATIONS ISSUE

In May 2017, LT filed its partial summary judgment motion on the limitations issue ("LT's Motion"). In July 2017, the TTO filed a response. At the same time, the TTO filed a cross-motion for summary judgment ("the TTO's 2017 Motion") on its claims and LT's affirmative defenses. In the TTO's 2017 Motion, the TTO presented no argument on the limitations defense and simply cross-referenced its response. Ex. 1. The Court stayed the TTO 2017 Motion pending consideration of LT's Motion. Ex. 2.

In February 2018, Judge Hall ruled that that she could not resolve the limitations issue on summary judgment. Her Order states, "Defendant LT's Motion for Partial Summary Judgment, for the reasons stated in its oral ruling issued today in open Court, is denied without prejudice to proofs to be presented at trial." Ex. 3. In her oral ruling, she explained, "I'm going to deny the motion for Statute of Limitations without prejudice because I think there is some factual matters that may have a bearing on whether or not a Statute of Limitations will apply." Ex. 4 p.3.

While not ruling on the TTO's argument on the public trust exemption, Judge Hall suggested she did not regard this position as viable. *Id.* p.6-7. On the public interest exception, she made favorable comments, *id.* at p.8-9, but stated that she did not have sufficient information about the accounts, the movement of funds, and the relationship of the claims to the applicable legal precedent to resolve the issue without the presentation of evidence at trial. *Id.* p.7-8.

After receiving Judge Hall's ruling, the TTO filed a revised summary judgment motion ("the TTO's 2018 Motion"). While the TTO's 2017 Motion acknowledged that a ruling on LT's Motion would resolve the limitations issue, the TTO's 2018 Motion asked for a second bite at the apple. Judge Hall did not rule on the TTO's 2018 Motion before transferring the case. Now, this case is before a newly assigned Circuit Judge. LT appreciates the Court granting the parties leave to seek reconsideration of the Court's ruling on the statute of limitations.

III. THE STANDARDS FOR SUMMARY JUDGMENT AND RECONSIDERATION

Pursuant to 735 ILCS 5/2-1005(d), a Court may determine that "there is no genuine issue of material fact as to one or more of the major issues in the case." Under Illinois law, "The applicability of a statute of limitations to a cause of action presents a legal question …." *Travelers Cas. & Sur. Co. v. Bowman*, 229 Ill.2d 461, 466 (2008). "The purpose of a motion for reconsideration is to apprise the trial court of newly discovered evidence, a change in the law, or errors in the court's earlier application of the law." *Farley Metals v. Barber Colman Co*., 269 Ill.App.3d 104, 116 (1st Dist. 1994).

IV. THE APPLICABLE 5-YEAR STATUTE OF LIMITATIONS

Which statute of limitations applies in this case depends on the nature of the parties and the legal grounds for the TTO's three claims. Over a century ago, money management and accounting were difficult tasks beyond the capability of most school districts. Illinois set up a

political subdivision in each township called the township trustees of schools. The trustees were elected officials who appointed a treasurer. They collect property tax revenues earmarked for school districts within the township, manage the investment of the schools' funds, and perform accounting functions for the schools. Ex. 5. LT is the largest school district in the TTO's jurisdiction. LT owns about 25 percent of the commingled investment pool that the TTO manages for LT and the other school districts. Ex. 6 p.26.

In this case, the TTO bases all three of its claims on various provisions in the School Code, 105 ILCS 5/1 *et seq.* Ex. 7. First, the TTO contends that it paid for LT's annual audit for 19 years, but that the TTO did so improperly under Article 3, Section 7 of the School Code, and the TTO should be allowed to recoup those payments from LT ("the Audit Payments Claim"). *Id.* ¶ 48, 54. Second, the TTO contends that it overallocated investment income to LT relative to the other districts for 17 years under Section 8-7 of the School Code, and that the TTO should be able to recoup those funds from LT ("the Income Allocation Claim"). *Id.* ¶ 40, 44. Third, the TTO contends that LT failed to pay its pro rata expense bills in full for 12 years under Section 8-4 of the School Code, and tries to disavow an agreement between the parties to offset LT's business function costs against those expense charges ("the Pro Rata Claim"). *Id.* ¶ 25-26, 33-36.

The School Code does not include a statute of limitations, and the Code of Civil Procedure does not contain a limitations period for claims under the School Code. Where the Code does not list a limitations period for a particular claim, the five-year catch-all limitations period applies. 734 ILCS 5/13-205 (governing "all civil actions not otherwise provided for").

The Supreme Court of Illinois has emphasized that statutes of limitations are favored because they are necessary to prevent injustices to litigants. "A statute of limitations is by definition an arbitrary period after which all claims will be cut off. However, the need to encourage

claimants to investigate and pursue causes of action in order to discourage delay, in time, outweighs the right to litigate a claim." *Langendorf v. City of Urbana*, 197 Ill.2d 100, 110 (2001). "Delayed claims will almost certainly prejudice defendants, who must defend against claims arising out of traumatic events long after witnesses' memories have faded and evidence has become unavailable for testing and inspection." *Golla v. Gen. Motors Corp*., 167 Ill.2d 353, 370 (1995). These fairness considerations are critical in our case, where the TTO waited up to 19 years to assert a legal claim against LT, and only did so due to a change in leadership at the TTO.

Furthermore, there is no dispute in this case about the impact of the 5-year limitations period in this case: barring claims based on events and transactions prior to October 17, 2008 (5 years before filing). This bar would reduce the Audit Payments Claim from $511,068.60 to $164,435.35. Ex. 8. This bar would reduce the Income Allocation Claim from $1,427,442.04 to zero, and thus eliminate the need for expert accountants. Ex. 9. This bar would reduce the TTO's pro rata expense claim from $2,628,807 to $1,080,160. Ex. 10.

V. THE PUBLIC RIGHTS EXCEPTION TO LIMITATIONS

Once LT has established the applicability of a statute of limitations to the TTO's claims, the burden shifts to the TTO to prove that an exception to that limitations period applies. *Ocasek v. City of Chicago*, 275 Ill.App.3d 628, 632 (1st Dist. 1995). Based on the uncontroverted facts of this case, the TTO cannot meet its burden of proving that the public rights exception to the statute of limitations applies to any of its three claims. Judge Hall erred when she found there were disputed factual issues concerning this exception that needed to be resolved at trial.

When considering claims of governmental bodies, Illinois courts have distinguished cases involving "public rights" from those involving "private rights." The involvement of public money or public government units is not determinative. Rather, the public versus private distinction

depends on whether the government unit's claims are based on general public interests involving health or safety, and the remedial expenditure of public funds pursuant to legal requirements, or whether the dispute involves financial transactions that are more like private corporate claims.

A. The Applicable Case Law

The standards for applying the public rights exception were established in the Supreme Court's decisions in *Board of Education v. A, C & S, Inc.*, 131 Ill.2d 428 (1989), and *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill.2d 457 (1983). In *Shelbyville*, the city sued a home builder for failing to construct streets in a subdivision in accordance with the requirements of a city ordinance. *Id.* at 459. Many years later, the city "eventually constructed or repaired the streets at great expense to itself." *Id.* at 459-60. The Court held that the city's claim was exempt from the statute of limitations because "the safety of all persons who have occasion to use the streets at issue here will depend on the workmanlike construction and maintenance of the streets." *Id.* at 464. The Court further reasoned that the action was public in nature because the city had to spend public money for road work that the builder should have done under the ordinance, and the city had a responsibility under state statutes to maintain the roads. *Id.* at 464-65.

In the *A,C&S* case, 34 school districts sued 78 defendants involved in the manufacturing and distribution of asbestos-containing material. 131 Ill.2d at 436. The school districts were required by a state statute to remove or contain asbestos materials in public schools, and they expected to spend large amounts of money on the remedial work. *Id.* at 437. The Court held that the application of the statute of limitations depended on whether "the right that the government unit seeks to assert is in fact a right belonging to the general public, or whether it belongs only to the government or some small distinct subsection of the public at large." *Id.* at 472. More specifically, the Court had to consider a three-part test: "the effects of the interest on the public,

the governmental entities obligation to act on behalf of the public and the extent to which public funds must be expended." *Id.* at 476.

The Court concluded that the districts' claims were in the general public's interest because of the "interest in the safety of these public buildings and in the safety of a large segment of this State's population which attends the public schools." *Id.* at 473-74. The Court referenced the "property damage that will be costly to repair" and the "health concern involved." *Id.* at 474-75. The Court also relied on the state statute that required the schools to correct the asbestos problems and the state administrative oversight authority and grants set up for this effort. *Id.* at 474. The Court found that the asbestos projects "will run into the millions." *Id.* at 476. Accordingly, the Court held that the districts were not barred by the statute of limitations. *Id.*

The most recent Illinois decision on this exception is *Champaign County Forest Preserve Dist. v. King*, 291 Ill.App.3d 197 (4th Dist. 1997). In *Champaign County*, a forest preserve district claimed it was overcharged for liability insurance purchased over 6 years earlier. *Id.* at 199. Defendant raised the 5-year catch-all limitations period. *Id.* The Court applied the Supreme Court's three-factor test. On the effect of Champaign County's interests on the general public, the Court distinguished the liability insurance involved from the health and safety interests in the prior cases: "Unlike the governmental activities in *Shelbyville* and *A,C&S*, plaintiff's purchase of liability insurance in this case had no effect on the public at large. It did not make the public safer, nor did it reduce the likelihood of injury on plaintiff's property." *Id.* at 201.

For the second factor, the obligation to act, the Court determined that "although plaintiff was authorized to purchase insurance, it was not required to do so." *Id.* Nor was there a reference to a statute requiring the county to recoup alleged overcharges. *Id.* For the third factor, the necessity of spending public money, the Court noted that "the fact that public funds were used to purchase

insurance does not necessarily render it a public act. Otherwise, any use of public funds would always be considered a public act." *Id.* at 202. The Court therefore concluded that the district's purchase of insurance was private act subject to a limitations defense. *Id.*

A recent federal decision addressed the public rights test in the context of a village's claim for trespass and nuisance for flow of contaminants onto public land. *Village of DePue v. Viacom Int'l, Inc.*, 713 F.Supp.2d 774, 778 (N.D. Ill. 2010). The Court decided that the village's claims were time-barred under the Illinois cases, and reasoned that "lost potential tax and business revenues, in and of themselves, are not damages that are part of a 'public' cause of action, as they do not implicate the public's interest in health and safety, and merely affect the economic interests of the residents of the Village." *Id.* at 782.

There are two older Illinois cases, as well. In *People v. Oran*, 121 Ill. 650 (1887), the town of Oran waited 10 years to sue the town of Atlanta for money due on a land transfer. The Court decided that the 5-year statute of limitations barred the claim. *Id.* at 652-54. The Court held, "No public rights are involved in this case. The controversy relates solely to two townships…. The public will neither lose nor gain if the town of Atlanta is required to pay all of its indebtedness; nor will it affect the public if the town of Oran is required to contribute." *Id.* at 655-56.

The other older case is *People v. Knox*, 157 Ill.App. 438 (2nd Dist. 1910) (pre-1935 persuasive authority). In *Knox*, a county sought to recover allegedly excessive and wrongful funds paid to the sheriff. *Id.* at 438-39. The Court decided that the statute of limitations applied, and held that claims of municipalities are exempt from statutes of limitation only where the claims involve "governmental affairs affecting the general public." *Id.* at 439. The Court concluded that the alleged overpayments to the sheriff concerned "only private rights" because the general public "are not interested in the amount allowed for these county expenses." *Id.* at 440.

B. <u>The Audit Payments Claim: Private Rights</u>

The TTO's three claims are based on three different statutes, involve different facts, and must be considered separately for purposes of the exemption. For the Audit Payments Claim, the general public has no direct interest in which government unit – the TTO or LT – paid $511,068.60 to Baker Tilly from 1993-2012 (about $27,000/year) for the costs of LT's annual audits. The TTO admits that these payments "were knowing and intentional, i.e., payment was not accidentally made." Ex. 11 ¶ 33. This claim does not involve any public health or safety issues as in *Shelbyville* and *A,C&S*, and instead only implicates the types of expenses and inter-government financial dealings held to be private in nature in *Village of DePue*, *Knox*, and *Oran*.

The TTO argued to Judge Hall that it had an interest in reversing these payments because they were the fault of a rogue Treasurer, the now incarcerated Robert Healy. In fact, the TTO's Trustees who supervised Healy were aware of these payments. In a 1999 letter to LT and the Trustees, Healy wrote, "The trustees hire and pay for the audit of the school districts and the Treasurer's office in Lyons Township." Ex. 12 p.6. Trustee (now Judge) Neil Hartigan confirmed his belief that the TTO paid for all of the districts' audits. Ex. 13 p.25-26, 49.

On the obligation of the TTO to act on behalf of the public, the TTO contends that LT had an obligation to pay for its own audits under the School Code, and that the TTO must protect the interests of the other districts by enforcing this provision. However, Section 3-7 of the School Code states, "Each school district shall, as of June 30 of each year, cause an audit of its accounts to be made …." 105 ILCS 5/3-7. This provision also empowers the regional superintendent, in the event a district does not submit an audit, to pay for an audit and charge the cost back to the district. *Id.* This provision contains no requirement that LT pay for its own audit, a fact that the TTO's

representative deponent admitted; she testified that the statute "has no indication of who pays for an audit, just that one must be completed." Ex. 6 p.80-82.

As for the expenditure of public funds, the TTO already paid Baker Tilly years ago. There are no further funds that will be spent in connection with the Audit Payments claim, which is the same as in *Champaign County* and different than *A,C&S* and *Shelbyville*. The TTO claims that it is acting on behalf of the other school districts, and implies that it might share any recoveries with them, but that would not be an expenditure of public funds. In any event, the TTO already informed the other districts not to expect to receive any credits from the ongoing litigation or insurance recoveries due to the TTO's long history of deficit spending practices. Ex. 14.

C. The Income Allocation Claim: Private Rights

In the Income Allocation Claim, the TTO contends that the TTO overallocated to LT about $1.5 million in income over 17 years (about $88,000/year). Ex. 7 ¶ 44. There is no dispute that the TTO was solely responsible for these allocations and simply presented the end result to LT. As the TTO explains, this is a financial accounting issue among the school districts within the TTO's jurisdiction. *Id.* ¶ 43. The TTO admits it does not "have any understanding as to how or why the treasurer erroneously allocated" these funds. Ex. 6 p.172.

Although the TTO alleges that Healy overpaid LT relative to the other districts (which LT disputes), that still does not identify a public health or safety issue. This claim is an intergovernmental dispute held to a private right in *Oran*. It is not an overstatement to say that unless they read the Chicago Tribune editorials calling for the TTO's abolition, most of the general public is not even aware of the existence of the TTO or the functions it performs.

As for the obligation of the TTO to act on behalf of the public, the TTO's claim relies on Section 8-7 of the School Code, which requires the Treasurer to credit each district with the amount

of its investment earnings from the pooled investment fund. 105 ILCS 5/8-7. However, the Section 8-7 provides no support for the Income Allocation Claim. This is because the TTO, due to its incomplete financial records, does not know how much investment income it earned on the districts' pooled investments or the amounts due to LT. Ex. 15 p.12-18, 42. The TTO's claim is based solely on handwritten notes of Healy's arbitrary distributions of investment income, and the TTO's contention that LT received too big a share compared to other districts. *Id.* p.12-18, 42, 60. Section 8-7 does not state any obligation of the TTO to act on the relative overallocations.

As for the expenditure of public revenues, there are none involved in this claim. The last claimed overallocations were in 2009. The TTO does not allege that it will have to spend any new funds to remediate these credits to LT. Essentially, there are no asbestos materials to remove, and no roads to build – just accounting distributions and internal ledger entries to contest.

D. <u>The Pro Rata Claim: Private Rights</u>

The Pro Rata Claim asserts that LT underpaid or failed to pay annual bills the TTO sent LT for 2000-12. This dispute concerns an agreement to setoff LT's business function costs against the TTO's pro rata invoices, because LT performed its own accounting functions and the TTO did not have to pay for any of its own personnel to do this work.

Again, the TTO attributes this long course of dealing to unauthorized decisions of Healy that must be reversed. However, the record evidence shows otherwise. In 2000, Healy presented the Trustees with the written LT proposal on the setoff arrangement for their approval, Ex. 16 p.2, and the Trustees voted unanimously to accept it. Ex. 17 p.1. Trustee Hartigan confirmed his understanding of the TTO's agreement to pay the costs of LT's business functions through offsets to the pro rata bills throughout the relevant time period. Ex. 13 p.40-42. While it is apparent that the new leadership of the TTO is unhappy with the past Trustees' arrangement with LT, the TTO

cannot identify any interest of the general public in a contractual/billing dispute between government units, which at most would involve some shifting of funds among them.

As to any obligation of the TTO to disavow its past arrangement with the TTO, there is no statute that has a direct impact on this dispute, in contrast to the statutes present in *A,C&S* and *Shelbyville*. Although the TTO relies on general provisions in the School Code charging it with safeguarding the school districts' funds, those provisions are not specific to the present claim. If these general statutes are sufficient, then any claim of the TTO would be exempt from limitations.

As to the expenditure of public funds, the TTO will not have to spend any funds in connection with the Pro Rata Claim. The Pro Rata Claim is fundamentally a collection claim that alleges money due from past bills sent. There is no dispute that from 2000-12, the TTO was aware of the partial payments and offsets and considered the bills satisfied. If the TTO really had to charge the other districts for an alleged shortfall, and make the other districts pay in more funds, it would have done so years ago. The reality is that the TTO accounts for school funds as it sees fit. As LT noted in its Counterclaim in this case, the TTO recovered over $1 million in insurance proceeds for Healy's expense and salary thefts from the districts, but the TTO did not credit the districts' agency accounts with any of the money from these proceeds. Ex. 18 p.1-2.

Thus, for each of the TTO's three claims in this case, as a matter of law, the TTO cannot use the public rights exception to avoid the applicable statute of limitations.

VI. THE HELD IN TRUST EXCEPTION TO LIMITATIONS

As with the public rights exception, the TTO cannot meet its burden of proof, as a matter of law, on the application of the held in trust exception to the facts of this case. The held in trust exception requires that a specific pool of dispute funds be held in an expressly created trust

account. This exception does not apply to general funds of a defendant held in its agency account, like LT's account at the TTO, over which LT has sole spending authority.

The TTO's argument to Judge Hall relied on the Supreme Court's decision in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653 (1883). The *District 5* case involves the same township treasurer system. In *District 5*, the plaintiff school district, District 5, claimed that the township treasurer collected tax revenue for District 5, but mistakenly credited revenue to the account of defendant District 1. *Id.* at 655. The Court held that District 5's claim was time-barred. Because the treasurer had credited the disputed funds to District 1's account, the treasurer no longer held them in trust: "The trustee in this case was the township treasurer, and as long as he held the money it was a trust fund in his hands, but when [the treasurer] paid it out to [District 1], or on [District 1's] orders, it was not a trust fund in [District 1's] hands which would exclude the operation of the Statute of Limitations." *Id.* at 655-56. The Court reached this conclusion even though the treasurer managed the account of District 1, which was clear because the treasurer had "paid out" disputed funds on the "orders" of District 1.

District 5's holding is consistent with Illinois law distinguishing "agency accounts" (also called "custodial accounts") from "trust accounts." In *Tucker v. Soy Capital Bank & Tr. Co.*, 2012 IL App (1st) 103303, the Court explained that a "'custody' or 'custodial' account is a type of agency account in which the custodian has the obligation to preserve and safekeep the property entrusted to him for his principal." *Id.* ¶ 32. The Court held that agency accounts are distinct from trust accounts, and that trust accounts must be expressly established. *Id.* ¶ 32-34. The Court ruled that the IRA accounts in dispute were alleged to be agency/custodial accounts and therefore were not subject to the legal protections afforded to a trust account. *Id.* ¶ 34.

The counterpoint to the *District 5* case is the Supreme Court's decision in *Bd. of Sup'rs of*

Logan County. v. City of Lincoln, 81 Ill. 156 (1876). That case explains when a pool of disputed public funds actually is held in trust and is not subject to a statute of limitations defense. In *City of Lincoln*, the city claimed ownership of a pool of disputed funds that the county received and held in the county treasury. *Id.* at 157. The Court held that because the disputed funds belonged to the city, but were held in the county treasury, the county was holding those funds in trust for the city: "The funds involved in this controversy are in the nature of trust funds, held by the county for a specific object, defined by a public law, and hence the Statute of Limitations is not available as a defense to the action." *Id.* at 158-59.

Applying this case law to the facts of the present case requires an analysis of the TTO's claims and the accounts at issue. The TTO's Trustee Michael Thiessen testified that the TTO has its own operational account as well as separate accounts for LT and the other districts. He stated that the accounts of LT and the other districts contain "agency funds which we manage on their behalf." Ex. 19 p.7-8. The Amended Complaint, which is verified and thus contains judicial admissions, repeatedly states that the TTO manages an "Agency Account" for LT. Ex. 7 ¶ 20, 21, 58. The TTO's demand for relief asks this Court for authority to take money from LT's "Agency Account." *Id.* p. 11-12. The TTO also admits that the TTO is the "custodian" of LT's funds. *Id.* ¶ 13-14. The TTO's admissions on the nature of LT's account are consistent with the School Code. 105 ILCS 5/8-6 provides that the **"**school treasurer shall have custody of the school funds" – and says nothing about holding those funds in trust.

Also, in contrast to a trust account, there is no dispute that for LT's account, only LT can authorize disbursements. The Amended Complaint admits the Treasurer can make payments from a district's agency account only upon receiving the district's "lawful instruction to the Treasurer to issue payment." *Id.* ¶ 10, 20, 21.

Accordingly, under the undisputed facts of this case, there is no legitimate question that LT's account, like District 5's account, is an agency account containing funds credited to LT; that LT has sole spending discretion; that there was no express creation of a trust for LT's account; and that LT's account does not contain funds held in trust.

Moreover, unlike in the *City of Lincoln*, the TTO is not fighting over a pool of money that the TTO received and still is holding in trust pending crediting or spending. The TTO's claims all concern monies that the TTO credited to LT's agency account long ago; paid to outside parties, on LT's orders, from LT's account; or simply did not receive from LT's account. The TTO's sole claim involving disputed funds paid into LT's account is the Income Allocation Claim, and the last alleged overpayment of interest was for FY2009. Ex. 9. Accordingly, as a matter of law, the TTO's attempts to recover funds from LT's agency account are not subject to the held in trust exception to the statute of limitations.

Conclusion

For all of the reasons in this motion, LT respectfully asks this Court to reconsider Judge Hall's ruling that LT's statute of limitations defense had to be proven at trial, and to instead determine, as a matter of law, that the 5-year statute of limitations in 735 ILCS 5/13-205 applies to the TTO's claims in the Amended Complaint, and the TTO's asserted exceptions to the statute of limitations are inapplicable to all of the TTO's claims.

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

By s/Jay R. Hoffman
Its Attorney

CERTIFICATE OF SERVICE

Jay R. Hoffman, an attorney, certifies that on July 29, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

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