

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: Stephen M. Mahieu, Dykema Gossett PLLC, 10 S. Wacker Drive, Suite 2300, Chicago, IL 60606

PLEASE TAKE NOTICE that on November 19, 2015, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **ANSWER AND AFFIRMATIVE DEFENSES TO LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204'S FIRST AMENDED VERIFIED COUNTERCLAIM**, a copy of which is hereby attached and served on you.

TOWNSHIP TRUSTEES

By: 
One of their Attorneys

Barry P. Kaltenbach
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
225 W. Washington Street, Suite 2600
Chicago, IL 60606
(312) 460-4200
Firm I.D. No. 44233

PROOF OF SERVICE

The undersigned, an attorney, certifies that a copy of the following document:

ANSWER AND AFFIRMATIVE DEFENSES TO LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204'S FIRST AMENDED VERIFIED COUNTERCLAIM has been served upon: Stephen M. Mahieu, Dykema Gossett PLLC, 10 S. Wacker Drive, Suite 2300, Chicago, IL 60606 as follows:

<input type="checkbox"/>	by personal service on November 19, 2015 before 4:00 p.m.
<input type="checkbox"/>	by U.S. mail, by placing the same in an envelope addressed to her at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 225 W. Washington Street, Chicago, Illinois, on November 19, 2015 before 4:00 p.m.
<input type="checkbox"/>	by facsimile transmission from 225 W. Washington, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 460-4201, consisting of ____ pages on November 19, 2015 before 4:00 p.m., the served [party/parties] having consented to such service.
<input type="checkbox"/>	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 November 19, 2015 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.
<input checked="" type="checkbox"/>	by email, on November 19, 2015 before 4:00 p.m.


Barry P. Kallenbach, attorney

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

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

Plaintiff-Counter Defendant,)

v.)

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,)

Defendant-Counter Plaintiff.)

Case No. 13 CH 23386

Hon. Sophia H. Hall

**ANSWER AND AFFIRMATIVE DEFENSES TO LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204'S FIRST AMENDED VERIFIED COUNTERCLAIM**

Plaintiff and Counter-Defendant, Township Trustees of Schools Township 38 North, Range 12 East, by its undersigned counsel, MILLER, CANFIELD, PADDOCK & STONE, P.L.C., for its Answer and Affirmative Defenses to the First Amended Verified Counterclaim filed by Defendant and Counter-Plaintiff, Lyons Township High School Dist. 204, states as follows:

THE PARTIES

1. District 204 is a public school district organized under the laws of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

ANSWER: Township Trustees admits the allegations of paragraph 1.

2. The TTO is a local public entity organized under the laws of the State of Illinois, consisting of three elected Trustees, a Treasurer, and support staff, with a principal office located in LaGrange Park, Cook County, Illinois.

ANSWER: Township Trustees admits it is a local public entity organized under the laws of the State of Illinois that consists of three elected Trustees, but denies the remaining allegations of paragraph 2.

3. District 204, at all times herein relevant, provided educational and extracurricular instruction and enrichment to thousands of students living in LaGrange, Western Springs, Burr Ridge, Countryside, Hodgkins, Indian Head Park, LaGrange Highlands, LaGrange Park, McCook, Brookfield, and Willow Springs.

ANSWER: Township Trustees admits the allegations of paragraph 3.

BACKGROUND

4. The township trustee model under which the TTO operates no longer exists in the vast majority of Illinois townships.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny the allegations within paragraph 4 and further state that the township trustee model is imposed by Illinois statute.

5. The services the TTO provides to some member school districts overlap extensively with services school districts are providing, or are otherwise capable of providing for themselves, in a more efficient and effective manner.

ANSWER: Township Trustees denies the allegations of paragraph 5.

6. The Trustees of the TTO are unsalaried and do not work full time in their capacity as Trustees.

ANSWER: Township Trustees admit the allegations of paragraph 6.

7. Instead, the Trustees of the TTO select and supervise a salaried Treasurer.

ANSWER: Township Trustees admit that it selects and supervised a salaried Treasurer in accordance with Illinois statute, but denies any remaining allegations within paragraph 7.

8. The TTO's Treasurer carries out the day-to-day operations of the TTO and manages the Treasurer's office. The Treasurer supervises support staff and interfaces with member school districts regarding services the TTO provides.

ANSWER: Township Trustees denies that the Treasurer carries out the day-to-day operations of the Township Trustees, but admits that the Treasurer manages the Treasurer's office, supervises support staff and interfaces with member school districts regarding the services the Treasurer provides. Township Trustees further state that the duties of the Treasurer are set forth by Illinois statute. Township Trustees denies any remaining allegations within paragraph 8.

9. During all times herein relevant up to 2012, Robert Healy ("Healy") served as the TTO's Treasurer.

ANSWER: Township Trustees admits the allegations of paragraph 9.

10. The TTO's Trustees previously selected and supervised Healy as Treasurer.

ANSWER: Township Trustees admits the allegations of paragraph 10.

11. During all times herein relevant up to 2012, the TTO's Trustees generally provided Healy with substantial discretion to conduct the business of the Treasurer's office.

ANSWER: Township Trustees denies the allegations of paragraph 11, but states that Illinois statute governed the obligations and authority of Mr. Healy during the time that he was Treasurer.

12. During all times herein relevant up to 2012, the TTO's Trustees did not handle day-to-day communications with member school districts.

ANSWER: Township Trustees lack sufficient knowledge to either admit or deny that during the entirety of the relevant time period none of the Trustees handled day-to-day communications with member school districts.

13. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, served as the TTO's main point of contact for member school districts regarding Treasurer's office activities.

ANSWER: Township Trustees lack sufficient knowledge to either admit or deny that Mr. Healy acted as the main point of contact for member school districts with respect to the Treasurer's office, but denies that he acted as its main point of contact.

14. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, was the TTO's primary point of contact with member school districts regarding the TTO's monthly, quarterly, and annual financial activities, including the preparation of *pro rata* share billing, investment interest distributions, and auditing expense payments for its member school districts.

ANSWER: Township Trustees lack sufficient knowledge to either admit or deny that Mr. Healy acted as the primary point of contact for member school districts with respect to the Treasurer's office, but denies that he acted as its main point of contact.

15. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, attended numerous school board and committee meetings on behalf of the TTO.

ANSWER: Township Trustees admits that during the relevant time period, Mr. Healy attended some school board and committee meetings as the Treasurer. Township Trustees denies any remaining allegations within paragraph 15.

16. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, prepared and provided the Trustees with written memoranda and other communications summarizing certain of his meetings with member school districts' school boards or committees.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny that at all times relevant Mr. Healy prepared and provided the Trustees with written memoranda and communications summarizing certain of his meetings with member school districts school boards or committees. Township Trustees deny any remaining allegations within paragraph 16.

17. Throughout the past several decades, TTO member school districts have voiced concerns to the TTO and its Treasurer that the TTO was charging member school districts for services the TTO was not providing, providing inefficiently or ineffectively, or was otherwise relying on member school districts to provide in whole or in part.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny paragraph 17 with respect to the "past several decades," but Township Trustees admits that over the last several years at least some member school districts have stated some level of frustration with respect to services the Treasurer was providing, but Township Trustees further states that some member districts have been supportive of the Township Trustees and Treasurer, and the Treasurer is obligated to provide such services under Illinois statute and the Township Trustees

are without power to alter Illinois statutory requirements. Township Trustees denies any remaining allegations within paragraph 17.

18. In addition to District 204, LaGrange School District 102, LaGrange School District 105, and the LaGrange Area Department of Special Education have all publicly expressed support for withdrawing from the TTO.

ANSWER: Township Trustees admits that some members, including District 204, have stated their desire to withdraw from the Township Trustees' oversight, but Township Trustees further states that their oversight is imposed by Illinois statute and Township Trustees is without power to alter Illinois statutory requirements. Township Trustees denies any remaining allegations within paragraph 18.

19. Prior to fiscal year 1999, District 204 has voiced concerns to the TTO on behalf of its stakeholders that the TTO has not provided services to District 204 commensurate with the *pro rata* expenses the TTO was charging District 204 for services on an annual basis.

ANSWER: Township Trustees admits that District 204 has stated it does not believe it was receiving services commensurate with its *pro rata* share, but Township Trustees further states that District 204's *pro rata* share is imposed by Illinois statute and Township Trustees is without power to alter Illinois statutory requirements. Township Trustees denies any remaining allegations within paragraph 19.

20. Historically, since at least 1993, District 204 had been providing services for itself that the TTO otherwise would have provided on District 204's behalf, including accounts payable and payroll services.

ANSWER: Township Trustees admits that District 204 has informed Township Trustees that it had undertaken to provide certain services for itself that the Treasurer was capable of providing to District 204, including accounts payable and payroll services. Township Trustees denies any remaining allegations within paragraph 20.

21. The TTO, through its Treasurer, agreed it was appropriate to pay District 204's audit expenses, which the TTO would have incurred if it provided accounts payable and payroll services instead of District 204.

ANSWER: Township Trustees denies the allegations of paragraph 21.

22. The parties' course of dealing since at least 1993 has demonstrated the TTO's agreement and obligation to pay for District 204's audit expenses arising from the services District 204 provided that benefitted the TTO.

ANSWER: Township Trustees denies the allegations of paragraph 22.

23. Since 1993, any auditing expense payment the TTO made for services provided to District 204 involved the release of funds to a third-party auditing firm. The TTO no longer held those funds paid to the third-party auditing firm in trust once those payments were made.

ANSWER: Township Trustees admits that once it issues payment, that particular payment is necessarily made to a third party, but Township Trustees denies any remaining allegations within paragraph 23 including any implicit allegation that the funds in question have not remained within its hands.

24. On information and belief, the TTO previously included all member school district audit expenses in determining each member school district's *pro rata* share of annual operating expenses.

ANSWER: Township Trustees denies the allegations of paragraph 24.

25. On information and belief, the TTO included such audit expenses in *pro rata* share invoices it submitted to District 204 during fiscal years 1993 through and including 2012.

ANSWER: Township Trustees denies the allegations of paragraph 25.

26. District 204, at all times herein relevant, including fiscal years from 1999 through 2012, was still providing services the TTO otherwise would have provided, including accounts payable and payroll services.

ANSWER: Township Trustees denies the allegations of paragraph 26.

27. District 204's concerns regarding overpayment and billing for services the TTO provided for other member school districts, but not District 204, were the subject of numerous meetings between District 204's school board, or committees thereof, and the TTO's Treasurer's office.

ANSWER: Township Trustees admits that District 204 complained of various aspects of the Treasurer's office, but denies any remaining allegations within paragraph 27.

28. One such meeting occurred on May 28, 1999, between members of District 204's Finance Committee and Healy, who attended on behalf of the TTO, wherein District 204 Finance Committee members voiced concerns that District 204 was not receiving 26% of the services the TTO delivered annually even though District 204's investment funds comprised 26% of the total investment funds the TTO managed.

ANSWER: Township Trustees lack sufficient knowledge to either admit or deny that District 204's Finance Committee members voiced the concerns indicated during the stated meeting, but denies any remaining allegations within paragraph

28 and further states that the formula for determining each member districts' *pro rata* share of expenses is set by statute and is unrelated to whether or not a particular district believes it is, or is not, receiving what it contends to be an appropriate level of service. Township Trustees further state that by correspondence dated April 29, 1999, Robert Healy, the then-Treasurer, explained to Dr. Lisa Beckwith, the then-Business Manager of District 204, that "105 ILCS 5/8-4 requires that all school districts pay their proportionate share of the expenses of the Treasurer's Office. The contribution formula is prescribed by statute and allows for no variation."

29. At the May 28, 1999, meeting, the parties discussed various options for how to remedy the TTO's unnecessary duplication of District 204's services. One option discussed was the TTO and District 204 reaching agreement to ensure that the TTO was only charging District 204 for services the TTO actually provided to District 204.

ANSWER: Township Trustees denies the allegations of paragraph 29.

30. At the May 28, 1999, meeting, the parties agreed that Healy, on behalf of the TTO, and Lisa Beckwith ("Beckwith"), District 204's Treasurer, on behalf of District 204, would work together over the summer of 1999 to prepare options for review regarding achieving equity in the services the TTO provided to District 204 as compared to certain other member school district.

ANSWER: Township Trustees denies the allegations of paragraph 30.

31. The TTO and District 204 worked together over the summer of 1999 to develop options for review regarding achieving equity in the services the TTO provided to District 204.

ANSWER: Township Trustees denies the allegations of paragraph 31.

32. On or about August 18, 1999, Healy, on behalf of the TTO, wrote to Beckwith that:

If the responsibilities for the Accounts Payable and Payroll production [of District 204] were to be returned to the School Treasurer's office it would mean higher operating costs for the Treasurer's office in the form of salaries and benefits for increased staff and higher related expenses to accommodate the increase in work load.

I would expect that when the Trustees of Schools takes into consideration these necessary increases, they would logically conclude that a partial funding by the Treasurer's office to cover District 204's costs for the business functions District 204 now performs would be reasonable. Especially in light of the fact that the Treasurer's office is currently performing the same business functions for the eleven other school districts.

ANSWER: Township Trustees admit that Mr. Healy so wrote Ms. Beckwith, but deny any remaining allegations within paragraph 32 and further notes that Mr. Healy explained in the same letter that any deviation from the statutorily-imposed *pro rata* billing formula would require, at the minimum, an "Intergovernmental Agreement among all twelve taxing bodies in the Township, wherein the other eleven taxing bodies would agree to absorb the costs of the services District 204 claims it pays for but does not receive." Township Trustees further states that no such Intergovernmental Agreement was ever drafted or executed.

33. Healy's August 18, 1999, correspondence included courtesy copies to the TTO's Trustees, who are mentioned in the correspondence.

ANSWER: Township Trustees admits that the correspondence indicates courtesy copies were to be provided to the Trustees. Township Trustees lack sufficient

knowledge to either admit or deny whether the Trustees received such courtesy copies and denies any remaining allegations within paragraph 33.

34. On September 29, 1999, Healy, on behalf of and with the authority of the TTO, again met with District 204's Finance Committee.

ANSWER: Township Trustees lack sufficient knowledge to either admit or deny whether Mr. Healy participated in the meeting indicates, but denies that it authorized Mr. Healy to enter into any agreements with District 204 or the Finance Committee thereof.

35. At that September 29, 1999, meeting, Healy provided District 204's Finance Committee with information concerning charges District 204 was incurring that could properly be charged to the TTO.

ANSWER: Township Trustees denies the allegations of paragraph 35.

36. Some of those charges discussed during the September 29, 1999, meeting included accounts payable, payroll, computer services staff, computer processing, reconciliation, the printing of checks, and other similar costs.

ANSWER: Township Trustees denies the allegations of paragraph 36.

37. Healy represented to District 204's Finance Committee during the September 29, 1999, meeting that the TTO's Trustees had knowledge and were supportive of the proposal.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny what Mr. Healy may have represented at the meeting indicated, but denies that District 204 was entitled to rely upon Mr. Healy's representations if they are accurately alleged.

38. During the fall of 1999, the TTO and District 204 continued refining the agreement regarding the cost allocation of the TTO's and District 204's services.

ANSWER: Township Trustees denies the allegations of paragraph 38.

39. On February 29, 2000, District 204 finalized the terms of their agreement. Thereafter, District 204 provided the TTO, through its Treasurer, with a list of responsibilities that would become the direct cost and responsibility of the TTO's office, including: (a) payroll and accounts payable bank reconciliation; (b) the cost of balancing monthly totals between the TTO and District 204; (c) the cost of printing checks and envelopes for accounts payable, payroll, imprest, and student activities; (d) auditing expenses; and (e) the annual salary and benefit costs for a District 204 Programmer Analyst, Accounts Payable Bookkeeper, and Payroll Bookkeeper.

ANSWER: Township Trustees denies the allegations of paragraph 39.

40. As further evidence that the parties had reached an agreement, on February 29, 2000, District 204 advised the TTO that it would send an invoice to the TTO's Treasurer in May of 2000 with receipt of funds expected prior to the close of the fiscal year ending June 30, 2000.

ANSWER: Township Trustees denies the allegations of paragraph 40.

41. The TTO, through its authorized agent, Healy, adopted and accepted the agreement on or around March 22, 2000, with the agreement being first applied to the 1999 fiscal year.

ANSWER: Township Trustees denies the allegations of paragraph 41.

42. On information and belief, Healy had actual authority, either express or implied, on behalf of the TTO to enter into the agreement with District 204. On information and belief, Healy discussed the agreement relating to District 204's services with the

Trustees, and the trustees approved the agreement prior to March 22, 2000. District 204 inquired about Healy's authority, and was repeatedly informed that Healy had discussed the agreement with the TTO's Trustees, that the TTO's Trustees had knowledge of the nature and details of the agreement, and that they supported and approved it. In addition, the TTO's Trustees were copied on letters or memoranda Healy exchanged with District 204 regarding the negotiations and the details of the agreement.

ANSWER: Township Trustees denies the allegations of paragraph 42.

43. On information and belief, the TTO's Trustees, after approving the agreement, delegated authority to Healy to enter into, and perform under, the agreement on behalf of the TTO. The parties' course of dealing over the ensuing years confirmed Healy's actual authority and the TTO's Trustees' ratification and approval of the agreement.

ANSWER: Township Trustees denies the allegations of paragraph 43.

44. On information and belief, the TTO's Trustees authorized Healy to enter into many other agreements on behalf of the TTO throughout Healy's employment as Trustee.

ANSWER: Township Trustees denies the allegations of paragraph 44.

45. The TTO's unreasonable delay in filing any claim against District 204 has caused District 204 extreme prejudice, including prejudice due to the passage of time, the fading of witnesses' memories, and the unavailability of documents and other information that would have existed had the TTO acted with reasonable diligence and brought its claim in a timely manner.

ANSWER: Township Trustees denies the allegations of paragraph 45.

46. In the alternative, the TTO's Trustees purposely and intentionally cloaked or provided Healy, as the TTO's Treasurer and the primary interface for communications

between the TTO and District 204, with apparent authority to enter into the agreement with District 204. Based on the prior course of conduct relating to Healy's authority and representations alleged herein, District 204 reasonably believed Healy had apparent authority to act on behalf of the TTO in negotiating and assenting to the agreement with District 204.

ANSWER: Township Trustees denies the allegations of paragraph 46.

47. District 204 reasonably relied on Healy's representations, as agent of the TTO, regarding the parties' agreement, and substantially changed its position by not making changes in staffing, by not adjusting its annual budgets, by approving other expenditures, and by not taking steps to withdraw from the TTO.

ANSWER: Township Trustees denies the allegations of paragraph 47.

48. No statute or ordinance restricted or prohibited the parties from entering into the agreement.

ANSWER: Township Trustees denies the allegations of paragraph 48.

49. The parties acted in accordance with this agreement for more than twelve years.

ANSWER: Township Trustees denies the allegations of paragraph 49.

50. During each of those years, District 204 provided the TTO with a detailed breakdown of expenditures District 204 incurred in performing services the TTO otherwise would have had to perform.

ANSWER: Township Trustees denies the allegations of paragraph 50.

51. The TTO reviewed and accepted that breakdown each year, and District 204 was permitted to offset these expenditures against its annual *pro rata* share of the TTO's expenses.

ANSWER: Township Trustees denies the allegations of paragraph 51.

52. Had District 204 not performed these services, the TTO would have incurred increased salary, benefit, supply, and vendor costs in order to perform those services on District 204's behalf, which would have resulted in additional costs to the other TTO member school districts.

ANSWER: Township Trustees denies the allegations of paragraph 52.

53. District 204 performed the agreed services in a manner that was more efficient and cost effective for taxpayers than if the TTO had performed those services on District 204's behalf.

ANSWER: Township Trustees denies the allegations of paragraph 53.

54. In the years District 204's *pro rata* share of the TTO's expenses exceeded the value of the services District 204 performed on behalf of the TTO, District 204 caused its funds to be paid to the TTO to cover the remaining portion of its fair share of *pro rata* expenses.

ANSWER: Township Trustees admit that District 204 caused funds to be paid to the Township Trustees, but denies any remaining allegations and all implicit allegations within paragraph 54.

55. In the years the value of the services District 204 performed on behalf of the TTO exceeded District 204's fair share of *pro rata* expenses of the TTO, District 204 would not owe the TTO any additional payment for *pro rata* expenses for that year.

ANSWER: Township Trustees denies the allegations of paragraph 55.

56. Through providing services, and, when appropriate, causing payments to be made to the TTO, District 204 funded its complete *pro rata* share of the TTO's expenses each and every year through the fiscal year ending June 30, 2012.

ANSWER: Township Trustees denies the allegations of paragraph 56.

57. The parties' course of dealing each year for more than twelve years confirmed the terms of their agreement, as well as their understanding, approval, and meeting of the minds regarding this agreement at all times herein relevant.

ANSWER: Township Trustees denies the allegations of paragraph 57.

58. Pursuant to 105 ILCS 5/5-20, at all times herein relevant, the TTO was obligated, "[a]t each regular meeting, and at such other meetings as they may think proper," to "examine all books, notes, mortgages, securities, papers, moneys and effects of the corporation, and the accounts and vouchers of the township treasurer or other township school officer, and shall make such order for their security, preservation, collection, correction of errors, if any, and for their proper disposition, as may be necessary" (emphasis added).

ANSWER: Township Trustees admit that District 204 accurately quotes a portion of the Illinois School Code, but denies any other implicit allegations within paragraph 58.

59. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 that the parties' agreement regarding audit expenses and *pro rata* share payments was terminated.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny every possible communication that it or its Treasurer may had with District 204 during the nearly twenty-year period in question, but Township Trustees denies that it or its Treasurer was under any obligation to notify District 204 that District 204 that an agreement that never existed was being terminated, or that District 204

was violating Illinois statutory obligations. Township Trustees denies any remaining allegations within paragraph 59.

60. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 of any dispute regarding the parties' agreement regarding audit expenses and *pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny every possible communication that it or its Treasurer may had with District 204 during the nearly twenty-year period in question, but Township Trustees denies that it or its Treasurer was under any obligation to notify District 204 that District 204 was violating Illinois statutory obligations. Township Trustees denies any remaining allegations within paragraph 60.

61. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer attempt to collect any amounts past due from District 204 for audit expenses or *pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny every possible communication that it or its Treasurer may had with District 204 during the nearly twenty-year period in question, but Township Trustees denies that it did not make any efforts to collect past due amounts from District 204. Township Trustees denies any remaining allegations within paragraph 61.

62. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer notify District 204 of any error regarding audit expenses or *pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny every possible communication that it or its Treasurer may had with District 204 during the nearly twenty-year period in question, but Township Trustees denies that it or its Treasurer was under any obligation to notify District 204 that District 204 was violating Illinois statutory obligations. Township Trustees denies any remaining allegations within paragraph 62.

63. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 that the TTO or its Treasurer's office was disputing any payment by or offset to District 204.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny every possible communication that it or its Treasurer may had with District 204 during the nearly twenty-year period in question, but Township Trustees denies that it or its Treasurer was under any obligation to notify District 204 that District 204 was violating Illinois statutory obligations. Township Trustees denies any remaining allegations within paragraph 63.

64. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 that any auditor for the TTO had questioned or disputed any aspect of the parties' agreement regarding audit expenses and *pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny every possible communication that it or its Treasurer may had with District 204 during the nearly twenty-year period in question, but Township Trustees denies that it or its Treasurer was under any obligation to notify District 204 that

District 204 was violating Illinois statutory obligations. Township Trustees denies any remaining allegations within paragraph 64.

65. At no time from 1993 through 2012 did the TTO provide any written objection to District 204 regarding its audit expenses *or pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees state that they do not understand what District 204 means by “written objection,” but Township Trustees deny that they were required to provide a “written objection” to District 204 in order to cause District 204 to comply with its obligations under Illinois statute. Township Trustees denies any remaining allegations within paragraph 66.

66. At no time from 1993 through 2012 did the TTO provide any verbal objection to District 204 regarding its audit expenses *or pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees state that they do not understand what District 204 means by “verbal objection,” but Township Trustees deny that they were required to provide a “verbal objection” to District 204 in order to cause District 204 to comply with its obligations under Illinois statute. Township Trustees denies any remaining allegations within paragraph 66.

67. At no time from 1993 through 2012 did the TTO file any legal or quasi-legal claim against District 204 regarding its audit expenses *or pro rata* share calculations, offsets, or payments.

ANSWER: Township Trustees admits the allegations of paragraph 67, but denies that it was under any obligation to file any such claim.

68. Pursuant to 105 ILCS 5/17-1, *et seq.*, District 204 examined its finances and passed annual budgets in reliance on the parties’ agreement.

ANSWER: Township Trustees denies the allegations of paragraph 68.

69. Healy resigned as the TTO's Treasurer on or about August 31, 2012.

ANSWER: Township Trustees admits the allegations of paragraph 69.

70. It was discovered, after a 2012 investigation by the Better Government Association—not through any initiative of the TTO's Trustees—that Healy had improperly siphoned funds from the Treasurer's office for unearned sick, vacation, and personal days, among other improper allocations.

ANSWER: Township Trustees denies the allegations of paragraph 70.

71. Healy's misappropriation of funds the TTO collected from member school districts, including District 204, over a number of years totaled over \$1 million.

ANSWER: Township Trustees admit the allegations of paragraph 71.

72. One of the TTO's three Trustees resigned after the reporting of Healy's wrongdoing.

ANSWER: Township Trustees denies the allegations of paragraph 72.

73. The TTO filed a civil suit against Healy in 2012, alleging he converted school district funds, breached his fiduciary duty to the TTO, and committed fraud with regard to certain transfers of school district funds from 2007 through 2011.

ANSWER: Township Trustees admit the allegations of paragraph 73.

74. The TTO obtained a judgment against Healy in the civil suit on July 18, 2013, in the amount of \$908,400.62.

ANSWER: Township Trustees admit the allegations of paragraph 74.

75. Healy was criminally charged in 2013 with the theft of over \$1 million in member school districts' funds from the TTO. Healy pled guilty to those charges on March 18, 2015, and was sentenced to nine years in prison.

ANSWER: Township Trustees admit the allegations of paragraph 75.

76. District 204 had no knowledge of Healy's alleged criminal wrongdoing until after he resigned as Treasurer.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny the allegations of paragraph 76.

77. The TTO has recovered approximately \$1 million or more in fidelity bond proceeds and other insurance coverage relating to Healy's misappropriations of funds belonging to member school districts.

ANSWER: Township Trustees admits the allegations of paragraph 77.

78. The TTO has not disbursed to member school districts, including District 204, the approximately \$1 million or more in payments received from fidelity bond proceeds and other insurance coverage.

ANSWER: Township Trustees states that it does not understand what District 204 means by alleging that Township Trustees did not "disburse" the fidelity bond proceeds. Township Trustees denies that it is under an obligation to "disburse" the fidelity bond proceeds, or can lawfully do so under Illinois statute, and on that basis denies the allegations of paragraph 78.

79. The TTO has entered into a standstill agreement with its auditor, Baker Tilly Virchow Krause, LLP ("Baker Tilly"), wherein parties have agreed for a period of time not to file suit against each other and to waive any statute of limitations defense.

ANSWER: Township Trustees admits the allegations of paragraph 79.

80. Baker Tilly or its predecessor firm served as the TTO's auditor during the relevant fiscal years up through and including 2012.

ANSWER: Township Trustees admits the allegations of paragraph 80.

81. On information and belief, during that time period, the TTO billed member school districts, including District 204, for purported *pro rata* share expenses not permitted by law.

ANSWER: Township Trustees denies the allegations of paragraph 81.

82. For example, the TTO billed member school districts for thousands of dollars in services provided by a public relations firm. Those services were solely for the benefit of the elected Trustees of the TTO, and were not authorized under Illinois law.

ANSWER: Township Trustees denies the allegations of paragraph 82.

83. The TTO also spent thousands of dollars on investment advisors whose services, on information and belief, were duplicative, unnecessary, and not authorized under Illinois law.

ANSWER: Township Trustees denies the allegations of paragraph 83.

84. In addition, the TTO has failed to provide member school districts, including District 204, with documentation detailing the nature, amount, and need for each expense included in the TTO's *pro rata* share billings for fiscal years 1999 through 2012.
up to and including 2012.

ANSWER: Township Trustees denies the allegations of paragraph 84.

85. Furthermore, the TTO did not implement any budget for the relevant fiscal years up to and including 2012.

ANSWER: Township Trustees lacks sufficient knowledge to either admit or deny the allegations of paragraph 85.

COUNT I
(BREACH OF CONTRACT)

86. District 204 repeats and realleges paragraphs 1 through 85 above as this paragraph 86 of Count I as though fully set forth herein.

ANSWER: Township Trustees repeat their responses to paragraphs 1 through 85 as if fully set forth herein.

87. District 204 and the TTO entered into a valid, binding, and enforceable agreement in place during fiscal years 1999 through 2012 regarding the calculation of District 204's *pro rata* share of the expenses of the TTO.

ANSWER: Township Trustees denies the allegations of paragraph 87.

88. District 204 and the TTO had a meeting of the minds regarding the terms of the parties' agreement.

ANSWER: Township Trustees denies the allegations of paragraph 88.

89. District 204 relied on Healy's actual and apparent authority as Treasurer, under the supervision of the TTO, to negotiate, enter into, and perform under the agreement.

ANSWER: Township Trustees denies the allegations of paragraph 89.

90. District 204 fully performed all of its obligations under the parties' agreement during each and every fiscal year herein relevant.

ANSWER: Township Trustees denies the allegations of paragraph 90 and more specifically denies that it and District 204 had an agreement pursuant to which District 204 had obligations to perform, other than those obligations imposed upon District 204 by Illinois statute.

91. District 204 performed millions of dollars in services during fiscal years 1999 through 2012 on behalf of the TTO, which services the TTO otherwise would have performed on District 204's behalf

ANSWER: Township Trustees denies the allegations of paragraph 91.

92. As such, District 204's performance of the parties' agreement saved the TTO member districts millions of dollars in expenses during the life of the agreement.

ANSWER: Township Trustees denies the allegations of paragraph 92.

93. During fiscal years 1999 through 2012, the financial value of the services District 204 provided pursuant to its agreement with the TTO exceeded the amount of District 204's purported *pro rata* share of the TTO's expenses by hundreds of thousands of dollars. The TTO has not paid that amount to District 204.

ANSWER: Township Trustees denies the allegations of paragraph 93.

94. The TTO purported to terminate its agreement with District 204 on or about April 19, 2013.

ANSWER: Township Trustees denies that it entered into any agreement with District 204 and states that Illinois statute governs the relationship between the parties. Township Trustees admits that it notified District 204 that to the extent District 204 believed that any agreement existed, such agreement was being terminated. Township Trustees denies any remaining allegations within paragraph 94.

95. The TTO breached the terms of the parties' agreement in one or more of the following ways:

- a. Failed to provide District 204 with timely notice of any termination of the agreement;

- b. Failed to provide District 204 with offsets toward its annual *pro rata* share of expenses; and
- c. Otherwise failed to perform its obligations pursuant to the terms of the parties' agreement.

ANSWER: Township Trustees denies the allegations of paragraph 95.

96. District 204 has suffered damages as a result of the TTO's breach of the parties' agreement, and will continue to suffer damages into the future.

ANSWER: Township Trustees denies the allegations of paragraph 96.

97. Requiring District 204 now to pay past *pro rata* share or audit expenses notwithstanding the parties' agreements and prior course of dealing would cause tremendous harm to District 204's current operations and inflict negative consequences on District 204 taxpayers and students into the foreseeable future.

ANSWER: Township Trustees denies the allegations of paragraph 97.

COUNT II
(DECLARATORY JUDGMENT)

Township Trustees make no answer to Count II because it has been dismissed.

COUNT III
(ACCOUNTING)

112. District 204 repeats and realleges paragraphs 1 through 109 above as this paragraph 112 of Count III as though fully set forth herein.

ANSWER: Township Trustees repeat their responses to paragraphs 1 through 109 as if fully set forth herein. To the extent allegations from Count II are incorporated into Count III, Township Trustees object to the same and deny all material allegations therein for purposes of responding to this Count III.

113. District 204 placed trust and confidence in the TTO by, among other things, entrusting it and its Treasurer with access to school district funds and authorizing them to

engage in certain financial transactions. As a result of that trust and confidence, the TTO has a special or fiduciary relationship with its member school districts, including District 204.

ANSWER: Township Trustees lack sufficient knowledge as to whether District 204 placed trust and confidence in the Township Trustees. Township Trustees further states that the relationship between it and District 204 is governed by Illinois statute and denies all allegations that are inconsistent with that statute.

114. The TTO has acknowledged, including in correspondence dated October 16, 2013, that it is a fiduciary and owes fiduciary duties to member school districts, including District 204.

ANSWER: Township Trustees states that the relationship between it and member school districts is governed by Illinois statute and denies all allegations that are inconsistent with that statute.

115. As such, the TTO is required to act in good faith and in the best interests of its member school districts, including District 204, when incurring expenses, preparing and submitting *pro rata* share invoices, accounting for the funds of member school districts, calculating interest, making interest payments, and making other financial decisions that affect member school districts.

ANSWER: Township Trustees states that the relationship between it and member school districts is governed by Illinois statute and denies all allegations that are inconsistent with that statute.

116. At all times herein relevant, the TTO had an obligation to track and record its financial-related activities properly and to keep proper business records to allow each member school district, including District 204, to determine the accuracy of the TTO's

representations regarding funds belonging to each member and to make decisions regarding how to allocate those funds.

ANSWER: Township Trustees states that the relationship between it and member school districts is governed by Illinois statute and denies all allegations that are inconsistent with that statute.

117. On information and belief, as a result of the TTO's mismanagement and failed oversight, it invoiced and received purported *pro rata* share funds from District 204 relating to expenses the TTO was not legally entitled to incur or charge to member school districts. District 204 also believes that the TTO has failed to pay District 204 proper interest earnings on millions of dollars in investments.

ANSWER: Township Trustees denies the allegations of paragraph 117.

118. Despite numerous requests, the TTO has failed to provide District 204 with requested financial data to verify or refute its claims. Without such information, including books and records, District 204 cannot ascertain what it is owed or the validity of the TTO's alleged claims.

ANSWER: Township Trustees denies the allegations of paragraph 118.

119. Much of the financial data in the TTO's possession is cryptically stored on a database the TTO created and continues to operate using specialty software. The TTO is the only party with knowledge of, and access to, the vast financial contents of that database.

ANSWER: Township Trustees denies the allegations of paragraph 119.

120. District 204 has demanded from the TTO the books, records, and data necessary for conducting an accounting for the period of January 1, 1993 through the present, but the TTO has refused to turn over those books and records.

ANSWER: Township Trustees denies the allegations of paragraph 120.

121. District 204 has requested that the TTO provide a full accounting for the period of January 1, 1993 through the present, but, to date, the TTO has failed to provide the requested accounting.

ANSWER: Township Trustees denies the allegations of paragraph 121.

122. Instead, the TTO has only directed District 204 to public financial statements, which do not provide the data necessary for conducting a complete accounting, including all backup documents and the financial data located on the TTO's financial database.

ANSWER: Township Trustees denies the allegations of paragraph 122.

123. District 204 propounded requests to admit facts on the TTO in an attempt to learn additional information about the basis of the TTO's claims, but the TTO refused to admit or deny many of those requests, claiming that it lacked knowledge.

ANSWER: Township Trustees admits that it responded to requests to admit facts and that some of its response included denying the facts asserted or stating a lack of knowledge to respond thereto. Township Trustees denies any remaining allegations within paragraph 123.

124. On information and belief, the TTO has never conducted a forensic audit of the books and records that form the basis of its claims in this action, as reflected by its changes in position regarding the amounts the TTO claims District 204 owes it.

ANSWER: Township Trustees does not understand what District 204 means by "forensic audit," but Township Trustees states that it has had an annual audit performed as required by Illinois statute.

125. For example, the original complaint the TTO filed claimed District 204 owed a *pro rata* share payment of \$2,583,531.68, while the amended complaint sought \$2,628,807 in *pro rata* share payments (a difference of \$45,275.32).

ANSWER: Township Trustees admits that after further investigation and after the passage of additional time (during which District 204's *pro rata* share logically increased), the amount of the *pro rata* share payments at issue have changed. Township Trustees denies any remaining allegations within paragraph 125.

126. Similarly, the TTO's original complaint claimed the TTO overpaid interest to District 204 in the amount of \$1,380,496.53, while the amended complaint alleged the interest overpayment was \$1,574,636.77 (a difference of \$194,140.24).

ANSWER: Township Trustees admits that after further investigation, the amount of interest overpayments at issue have changed. Township Trustees denies any remaining allegations within paragraph 126.

127. The TTO represented to District 204 on March 8, 2013, and again on April 19, 2013, that District 204 owed the TTO audit fees of \$285,900.91, while it later claimed, on October 16, 2013, that District 204 owed audit fees of \$471,147.85 (a difference of \$185,246.94).

ANSWER: Township Trustees admits that after further investigation, the amount of audit fees at issue have changed. Township Trustees denies any remaining allegations within paragraph 127.

128. The original complaint the TTO filed on October 16, 2013, alleged District 204 owed audit fees of \$473,174.85, while the TTO's amended complaint now alleges the amount due is \$511,068.60 (a difference of \$34,893.75).

ANSWER: Township Trustees admits that after further investigation, the amount of audit fees at issue have changed. Township Trustees denies any remaining allegations within paragraph 128.

129. Because the books, records, and other data relating to the TTO's financial activities affecting District 204 are exclusively within the control of the TTO, District 204 has an inadequate legal remedy in that it cannot evaluate the TTO's claims or determine the amount of damages it has suffered as a result of the TTO's misconduct.

ANSWER: Township Trustees denies the allegations of paragraph 129.

130. District 204 is unable to evaluate the merits of the TTO's claims at this time because it does not have necessary and sufficient access to the TTO's books, records, databases, and communications with the TTO's accountants as permitted by law.

ANSWER: Township Trustees denies the allegations of paragraph 130.

131. On information and belief, an accounting would reveal that the TTO owes District 204 hundreds of thousands of dollars relating to *pro rata* share, investment interest payments, and insurance payments.

ANSWER: Township Trustees denies the allegations of paragraph 131.

132. District 204 respectfully requests that the Court enter an order requiring the TTO to make a strict accounting of all assets it holds, all investments it has made, all interest payments it has made to member school districts, all *pro rata* share expenses it has invoiced, and all expenses it has paid that in any way have affected District 204, from January 1, 1993 through the present.

ANSWER: Township Trustees states that paragraph 132 does not contain any allegations directed against it and on that basis makes no response thereto. To the

extent a response is required, Township Trustees denies that District 204 is owed accounting.

COUNT IV
(QUANTUM MERUIT - PLED IN THE ALTERNATIVE)

133. District 204 repeats and realleges paragraphs 1 through 109 above as this paragraph 133 of Count IV as though fully set forth herein.

ANSWER: Township Trustees repeat their responses to paragraphs 1 through 109 as if fully set forth herein. To the extent allegations from Count II are incorporated into Count IV, Township Trustees object to the same and deny all material allegations therein for purposes of responding to this Count IV.

134. In the alternative, should the TTO contend the parties did not enter into an express contract or agreement as discussed above, District 204 performed services to benefit the TTO.

ANSWER: Township Trustees denies the allegations of paragraph 134.

135. District 204 did not perform the services to benefit the TTO gratuitously.

ANSWER: Township Trustees denies the allegations of paragraph 135.

136. The TTO accepted District 204's services.

ANSWER: Township Trustees denies the allegations of paragraph 136 insofar as it understands what District 204 means to allege.

137. To the extent it is deemed that the parties did not enter into a valid contract, no contract exists to prescribe payment for District 204's services.

ANSWER: Township Trustees admits that no contract exists between the parties and further states that its relationship with District 204 is governed by Illinois statute and denies all allegations that are inconsistent with that statute.

138. It would be unjust to allow the TTO to retain the benefit of District 204's services without compensating District 204 for those services.

ANSWER: Township Trustees denies the allegations of paragraph 138.

76. The TTO is legally obligated to reimburse District 204 in the amount of the reasonable value of the services it provided that the TTO otherwise would have been obligated to perform on District 204's behalf.

ANSWER: Township Trustees denies the allegations of paragraph 76.

COUNT V
(UNJUST ENRICHMENT - PLED IN THE ALTERNATIVE)

139. District 204 repeats and realleges paragraphs 1 through 109 above as this paragraph 139 of Count V as though fully set forth herein.

ANSWER: Township Trustees repeat their responses to paragraphs 1 through 109 as if fully set forth herein. To the extent allegations from Count II are incorporated into Count IV, Township Trustees object to the same and deny all material allegations therein for purposes of responding to this Count V.

140. In the alternative, should the TTO contend the parties did not enter into an express contract or agreement as discussed above, District 204 performed services to benefit the TTO.

ANSWER: Township Trustees denies the allegations of paragraph 140.

141. District 204 did not perform the services to benefit the TTO gratuitously.

ANSWER: Township Trustees denies the allegations of paragraph 141.

142. The TTO accepted, was enriched by, and unjustly retained a benefit—namely, District 204’s services—to District 204’s detriment.

ANSWER: Township Trustees denies the allegations of paragraph 142.

143. The TTO’s retention of that benefit violates the fundamental principles of justice, equity, and good conscience.

ANSWER: Township Trustees denies the allegations of paragraph 143.

Defenses

Township Trustees, in accordance with 735 ILCS 5/2-613(d), hereby sets forth the following grounds or defenses, whether affirmative or otherwise, which might take District 204 by surprise if not set forth herein:

First Defense – Prior Notice/Lack of Intergovernmental Agreement

1. The Treasurer’s compensation and expenses of office are statutorily required to be paid according to a *pro rata* formula set out within the Illinois School Code, with each member district the Treasurer serves paying its proportionate share of such compensation and expenses.

2. The Treasure is not authorized to alter or excuse the statutory obligations imposed by Illinois law. Likewise, the Township Trustees is not permitted to alter or excuse such statutory obligations.

3. The only source of revenue for the Treasurer’s office is the *pro rata* payments made by each member district. If any one member district pays less than its full *pro rata* share, the deficit must necessarily be paid by the other remaining member districts.

4. Accordingly, if District 204 were to be excused from paying less than its full *pro rata* share, the other member school districts would be adversely effected and would be forced to pay more than their *pro rata* share.

5. By letter dated April 29, 1999, Robert Healy, the then-Treasurer, notified Dr. Lisa Beckwith, the then-Business Manager of District 204, that:

Respectfully, regardless of whether or not [District 204] believes it receives the full value of services from the [Treasurer's] office, given the autonomous financial functions it performs, the provisions of 105 ILCS 5/8-4 **requires that all school districts pay their proportionate share** of the expenses of the Treasurer's Office. The contribution formula **is prescribed by statute and allows for no variation**. The situation at hand is analogous to a resident who sends his children to parochial schools, but is nonetheless required to pay that portion of his real estate tax bill earmarked for public school education.

6. By letter dated August 18, 1999, Mr. Healy further advised Dr. Beckwith that in the event an agreement could be reached that would excuse District 204 from paying its *pro rata* share (which such agreement Township Trustees assert would be in violation of Illinois statute in any event), such agreement could not be a private agreement between District 204 and the Treasurer's office, nor could it be between District 204 and Township Trustees, but rather it would need to be an Intergovernmental Agreement executed by all of the member districts.

7. In this same correspondence, Mr. Healy notified Dr. Beckwith that (a) the Township Trustees (not himself) would have to approve any decision whereby the Treasurer would partially fund District 204's business functions, and (b) the *pro rata* billing system could only be changed through legislation.

8. In spite of the above correspondence, District 204 now contends that it and Mr. Healy either privately agreed to a contract excusing it from its statutory obligation to pay its *pro rata* share, or that District 204 was justified in relying upon Mr. Healy's subsequent assurances that District 204 need not pay its *pro rata* share of the Treasurer's compensation and expenses of office. No Intergovernmental Agreement was ever prepared or executed.

Second Defense – Lack of Authority – District 204’s Finance Committee

1. Upon information and belief, Dr. Lisa Beckwith and District 204’s Finance Committee did not have lawful authority to enter into any contracts on behalf of District 204, or minimally did not have lawful authority to enter into the contracts or types of contracts that District 204 alleges to be at issue in this lawsuit.

2. District 204 alleges only that Dr. Beckwith and/or members of its Finance Committee met with Robert Healy and agreed to the purported contracts at issue. Absent District 204’s Board agreeing to the purported contracts, such contract would not have been lawfully adopted by District 204, regardless of the lack of authority on the part of Mr. Healy.

Respectfully,

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

By: 
One of Its Attorneys

Gerald E. Kubasiak
Barry P. Kaltenbach
Gretchen M. Kubasiak
Miller Canfield Paddock & Stone, PLC
225 W. Washington, Suite 2600
Chicago, Illinois 60606
(312) 460-4200
(312) 460-4201
Firm No. 44233

Certification as to Lack of Knowledge

The undersigned, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certified that the statements as to lack of knowledge in this instrument are true and correct.

Maat Masi 11-18-15
Date

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