



Legislation Text

File #: ORD19-1575, **Version:** 1

Extract of Minutes of a regular public meeting of the President and Board of Trustees of the Village of Romeoville, Will County, Illinois, (the “*Village*”) held at the Village Hall located at 1050 West Romeo Road, in said Village, at 6:10 p.m., on the 5th day of June, 2019

The President called the meeting to order and directed the roll to be called.

Upon the roll being called, John D. Noak, the President, and the following Trustees answered physically present at said location: _____

The following were absent: _____

* * *

(Other Business)

The President then announced that the next agenda item for the President and Board of Trustees was a request by Lewis University (the “*University*”) that the Village assist the University by authorizing (i) the execution and delivery of of a Tax Exemption Certificate and Agreement relating to the potential tax “reissuance” treatment for federal income tax purposes of the Village of Romeoville, Will County, Illinois Revenue Refunding Bond (Lewis University), Series 2018A (the “*Bond*”), (ii) the execution and delivery of an Information Return for Private Activity Bonds, Form 8038 and (iii) the execution and delivery of any other documents necessary or appropriate to effect the matters related to the potential tax “reissuance” treatment for federal income tax purposes of the Bond (collectively, the “*Village Documents*”). The Village, by reason of being a home rule unit pursuant to Section 6 of Article VII of the 1970 Constitution of the State of Illinois, has the power to authorize the execution and delivery of the Village Documents relating to the potential tax “reissuance” treatment for federal income tax purposes of the Bond. The President and Board of Trustees further discussed an ordinance authorizing the execution and delivery authorizing certain documents and

actions in connection therewith; Thereupon, Trustee _____ presented the following ordinance:

Ordinance Number _____

An Ordinance authorizing the execution and delivery of a Tax Exemption Certificate and Agreement relating to the potential tax “reissuance” treatment for federal income tax purposes of the Village of Romeoville, Will County, Illinois Revenue Refunding Bond (Lewis University), Series 2018A (the “Bond”); authorizing the execution and delivery of an Information Return for Private Activity Bond Issues, Form 8038; Authorizing the execution and delivery of any other documents necessary or appropriate to effect the matters related to the potential tax “reissuance” treatment for federal income tax purposes of the bond; and authorizing certain related matters.

Whereas, the Village of Romeoville, Will County, Illinois (the “*Village*”), has a population of more than 25,000 and, by reason of being a home rule unit pursuant to Section 6 of Article VII of the 1970 Constitution of the State of Illinois (the “*Act*”), may exercise any power or perform any function pertaining to its government and affairs; and

Whereas, the Village has previously issued its \$11,400,000 original aggregate principal amount Village of Romeoville, Will County, Illinois Revenue Refunding Bond (Lewis University), Series 2018A, of which \$10,605,000 remains outstanding (the “*Bond*”); and

Whereas, the Bond was issued pursuant to that certain Bond and Loan Agreement dated as of July 1, 2018 (the “*Agreement*”), among the Village, Lewis University (the “*University*”) and First Midwest Bank (the “*Purchaser*”); and

Whereas, under the terms of the Agreement the Bond matures on October 1, 2034 and currently bears interest at the Index Floating Rate (as defined in the Agreement), subject to adjustment upon an event of default or a determination of taxability, as more fully described in the Agreement; and

Whereas, the Bond was sold on a private placement basis to the Purchaser and the proceeds from the sale thereof loaned to the University, all as more fully described in the Agreement; and

Whereas, in connection with such sale, the University and the Purchaser entered into that certain Continuing Covenant Agreement dated July 1, 2018 (the “*Covenant Agreement*”); and

Whereas, under the Covenant Agreement, the University agreed to make redemption payments (as set forth in Section 5.17 of the Covenant Agreement); and

Whereas, the University inadvertently failed to make such \$795,000 redemption payment on October 1, 2018 as required under the Covenant Agreement; and

Whereas, the inadvertent delay in such redemption payment under the Covenant Agreement resulted in an Event of Default (as defined in the Covenant Agreement, the “*CCA Event of Default*”)); and

Whereas, such CCA Event of Default resulted in a cross default under the Agreement; and

Whereas, the cross default under the Agreement resulted in the University's interest payment obligations on the Bond to change to the Default Rate (as defined in the Agreement); and

Whereas, the Purchaser waived the event of default arising under the Covenant Agreement and Agreement; and

Whereas, the Purchaser waived the right to the higher interest rate under the Default Rate; and

Whereas, the waiver by the Purchaser of such higher interest rate under the Default Rate was deemed to be a significant modification of the Bond pursuant to Section 1.1001-3 of the Treasury Regulations; and

Whereas, the University has informed the Village, based upon the advice of bond counsel to the Village ("*Bond Counsel*"), that the waiver of such interest under the Default Rate on the Bond may result in the Bond being treated as "reissued" or "currently refunded" for federal income tax purposes; and

Whereas, the Bond may be treated as "reissued" for federal income tax purposes, the University has requested that the Village authorize and approve the execution and delivery of the Tax Exemption and Certificate Agreement ("*Tax Agreement*"), the Information Return for Private Activity Bonds, Form 8038 ("*Form 8038*"), and the execution and delivery of all other documentation deemed necessary or appropriate in connection therewith; and

Whereas, the Village desires to authorize and approve the the Tax Agreement, the Form 8038 and any other necessary or appropriate documentation to effect all of the foregoing;

Now, Therefore, Be It Ordained by the President and Board of Trustees of the Village of Romeoville, Will County, Illinois (the "*Board*"), as follows:

Section 1. The Village hereby acknowledges, based upon the advice of Bond Counsel, that the waiver of such interest under the Default Rate by the Purchaser may constitute under Section 1.1001-3 of the Treasury Regulations a "reissuance" or "current refunding" of the Bond for federal income tax purposes.

Section 2. The Village is hereby authorized to enter into a Tax Agreement with the University, if deemed necessary by Bond Counsel, in the form to be approved by Bond Counsel, the University and by counsel to the Village; the President of the Village, the Finance Director of the Village and any other officer or official of the Village be, and hereby is, authorized, empowered and directed to execute and deliver the Tax Agreement as so approved; when such Tax Agreement is executed and delivered on behalf of the Village as herein provided, such Tax Agreement will be binding on the Village; and from and after the execution and delivery of such Tax Agreement, the officers, employees and agents of the Village are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary or desirable to carry out and comply with the provisions of such Tax Agreement as executed.

Section 3. The Village is hereby authorized to execute and deliver a Form 8038, if deemed necessary by Bond Counsel, in the form to be approved by Bond Counsel and by counsel to the Village; the President of the Village, the Finance Director of the Village and any other officer or official of the Village be, and each of them hereby is authorized, empowered and directed to execute and deliver the Form 8038.

Section 4. The President of the Village, the Finance Director of the Village and any other officer or official of the Village be, and each of them hereby is, authorized to (i) execute and deliver such documents, certificates and undertakings of the Village to effect the foregoing described matters, (ii) execute and deliver to the Purchaser a new and amended Bond (the “*New Bond*”), if deemed necessary or desirable by Bond Counsel, in the form to be approved by Bond Counsel, (iii) approve the execution and delivery of such other documents, certificates and undertakings of other parties, including, without limitation, the University and the Purchaser and (iv) take such other actions as may be necessary or required in connection with carrying out and complying with this Ordinance, effecting the Tax Agreement and the foregoing described matters and/or the execution, delivery and performance of the Tax Agreement, the Form 8038, the New Bond, and any other documents; and all of the acts and doings of the the President of the Village which are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, shall be and hereby are authorized, ratified, approved and confirmed.

Section 5. The approvals granted by the Village pursuant to this Ordinance are subject to the Tax Agreement and any other document required to carry out and comply with this Ordinance being in full conformance with the requirements of the Village, except as expressly approved by the counsel to the Village or the President of the Village (and, for purposes of this Ordinance, any person duly appointed to any such office on an acting or an interim basis) of the Village, the satisfaction of such condition to be evidenced by the President of the Village or an authorized officer’s execution and delivery of such documents.

Section 6. The President, the Finance Director, the Village Clerk, the Deputy Village Clerk and any other official, officer, employee or agent of the Village be, and each of them hereby is, authorized and directed to execute, attest, seal and deliver any and all agreements, instruments, documents and certificates, to do any and all things deemed necessary to effect the execution and delivery of the the Tax Agreement, the Form 8038, the New Bond and such other agreements, instruments, documents and certificates, and to perform the obligations and duties of the Village hereunder and thereunder, all as shall be necessary and desirable to carry out the intent and purposes of this Ordinance, including the preambles to this Ordinance.

Section 7. That all acts of the Board and the officials, officers and employees of the Village that are in conformity with the intent and purposes of this Ordinance, whether heretofore or hereafter taken or done, be, and the same are hereby, in all respects, ratified, confirmed and approved.

Section 8. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions of this Ordinance.

Section 9. That a full, true and complete copy of this Ordinance shall be published within ten days after passage in pamphlet form by authority of the Board.

Section 10. That all ordinances, resolutions, or parts thereof, in conflict herewith are hereby superseded to the extent of such conflict; and that this Ordinance shall be in full force and effect immediately upon its passage and approval.

Ayes: _____

Nays: _____

Absent or Not Voting:

Adopted: June 5, 2019.

Approved: June 5, 2019.

President, Village of Romeoville,
Will County, Illinois

Published in pamphlet form by authority of the President and Board of Trustees on June __, 2019.

Attest:

Village Clerk, Village of Romeoville,
Will County, Illinois

Trustee _____ moved and Trustee _____ seconded the motion
that said ordinance as presented be adopted.

After a full discussion thereof, the President directed that the roll be called for a vote upon the motion to
adopt the ordinance.

Upon the roll being called, the following Trustees voted "Aye":
_____; the following Trustees voted "Nay": _____; and the following
Trustees were absent or not voting: _____.

Whereupon the President declared the motion carried and the ordinance adopted, and henceforth did
approve and sign the same in open meeting, and did direct the Village Clerk to record the same in full in the
records of the President and Board of Trustees of the Village of Romeoville, Will County, Illinois, which was

done.

* * *

(Other Business)

Upon motion duly made and seconded, the meeting adjourned.

Village Clerk

[Seal]

State of Illinois)
) SS
County of Will)

Certification of Agenda, Minutes and Ordinance

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Romeoville, Will County, Illinois (the "*Village*"), and as such official I am the keeper of the official journal of proceedings, books, records, minutes and files of the Village and of the President and Board of Trustees of the Village (the "*Board*").

I do further certify that the foregoing is a full, true and complete transcript of that portion of the minutes of the meeting of the Board held on the 5th day of June, 2019, insofar as the same relates to the adoption of Ordinance Number _____ entitled:

An Ordinance authorizing the execution and delivery of a Tax Exemption Certificate and Agreement relating to the potential tax "reissuance" treatment for federal income tax purposes of the Village of Romeoville, Will County, Illinois Revenue Refunding Bond (Lewis University), Series 2018A (the "Bond"); authorizing the execution and delivery of an Information Return for Private Activity Bond Issues, Form 8038; Authorizing the execution and delivery of any other documents necessary or appropriate to effect the matters related to the potential tax "reissuance" treatment for federal income tax purposes of the bond; and authorizing certain related matters.

a true, correct and complete copy of which said ordinance as adopted at said meeting appears in the foregoing transcript of the minutes of said meeting.

I do further certify that the deliberations of the Board on the adoption of said ordinance were taken openly; that the vote on the adoption of said ordinance was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all newspapers, radio and television stations and other news media requesting such notice on a day which was not a Saturday, Sunday or legal holiday for Illinois municipalities and not less than 48 hours prior to such meeting; that the agenda for said meeting was posted at the principal office of the Board and at the location where said meeting

was held at least 48 hours in advance of the holding of said meeting; that at least one copy of said agenda was continuously available for public review during the entire 48-hour period preceding said meeting; that said agenda described or made specific reference to said ordinance; that a true, correct and complete copy of said agenda as so posted is attached hereto; that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and the Illinois Municipal Code, as amended; and that the Board complied with all of the provisions of said Act and said Code, except as said Act and said Code are validly superseded by the home rule powers of the Village, and with all of the procedural rules of the Board in the conduct of said meeting.

In Witness Whereof, I hereunto affix my official signature and the seal of the Village, this ____ day of June, 2019.

Village Clerk

(Seal)

Village Clerk to Attach Agenda

State of Illinois)
) SS
County of Will)

Certificate of Publication in Pamphlet Form

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Romeoville, Will County, Illinois (the "*Village*"), and as such official I am the keeper of the official journal of proceedings, books, records, minutes, and files of the Village and of the President and Board of Trustees of the Village (the "*Board*").

I do further certify that on the ____ day of June, 2019, there was published in pamphlet form, by authority of the Board, a true, correct and complete copy of Ordinance Number _____ of the Village providing for the authorization of (i) the execution and delivery of of a Tax Exemption Certificate and Agreement relating to the potential tax "reissuance" treatment for federal income tax purposes of the Village of Romeoville, Will County, Illinois Revenue Refunding Bond (Lewis University), Series 2018A (the "*Bond*", (ii) the execution and delivery of an Information Return for Private Activity Bonds, Form 8038 and (iii) the execution and delivery of any other documents necessary or appropriate to effect the matters related to the potential tax "reissuance" treatment for federal income tax purposes of the Bond, and that said ordinance as so published was on said date

readily available for public inspection and distribution, in sufficient number to meet the needs of the general public, at my office as Village Clerk located in the Village.

In Witness Whereof I have affixed hereto my official signature and the seal of the Village this ____ day of June, 2019.

[Seal]

Village Clerk