

IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT

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Jeffrey D. Ferguson, Ron Floyd, Woody Goforth,	)	
Harold Kallal, Gary Krueger, Robert Ruland,	)	
Leland Snyders and Marilyn J. Woolsey,	)	
individually and as taxpayers of Jersey and	)	
Greene Counties, State of Illinois	)	Appeal from the Circuit
Court	)	of Jersey County
	)	No. 06-CH-52
Plaintiffs-Appellants,	)	
	)	Honorable Lois A. Bell
v.	)	Circuit Judge
	)	
Linda J. Crotchett and Deborah Banghart, in their	)	
official capacity as the duly elected and acting	)	
County Clerks of Jersey and Greene Counties,	)	
State of Illinois, and the Community Unit School	)	
District #100, a School District in Jersey and	)	
Greene Counties, State of Illinois,	)	
	)	
Defendants-Appellees.	)	

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**REPLY BRIEF AND ARGUMENT OF PLAINTIFFS-APPELLANTS**

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Gary Krueger, Robert Ruland, Leland Snyders and Marilyn J. Woolsey,  
individually and as taxpayers of Jersey and Greene Counties, State of Illinois

**ORAL ARGUMENT REQUESTED**

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State of Illinois, and the Community Unit School )  
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Circuit Judge

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**REPLY BRIEF AND ARGUMENT OF PLAINTIFFS-APPELLANTS**

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**POINTS AND AUTHORITIES**

**I. WHETHER THE TRIAL COURT ERRED IN DISMISSING THE TAXPAYERS’ COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF.....7**

*Nancy’s Home of Stuffed Pizza, Inc. v. Cirrencrone*, 144 Ill.App.3d 934, 941, 494 N.E.2d 795 (1986)..... 7

*People ex rel Daley v. Strayhorn*, 121 Ill.2d 470, 482, 521 N.E.2d 864 (1988)..... 7

*Eckberg v. Benso*, 182 Ill.App.3d 126, 132, 537 N.E.2d 967 (1989) ..... 7

*Gill v. Gill*, 8 Ill.App.3d 625, 627, 290 N.E.2d 897 (1972)..... 8

*Broadnax v. Morrow*, 326 Ill.App.3d 1074, 1077, 762 N.E.2d 1154 (4<sup>th</sup> Dist. 2002) 8 ..... 8

*Orland Park v. First Federal Savings and Loan Association*, 135 Ill.App.3d 520, 527, 481 N.E.2d 946 (1985)..... 8

*Blankenship v. County of Kane*, 85 Ill.App.3d 621, 623, 407 N.E.2d 145 (2<sup>nd</sup> Dist. 1980) ..... 9

*Bays v. Mathews*, 108 Ill.App.3d 1112, 1118, 440 N.E.2d 142 (5<sup>th</sup> District)..... 10

*Pyle v. Ferrell*, 12 Ill.2d 547, 553, 147 N.E.2d 341 (1958)..... 10

*Zegers v. Zegers, Inc.*, 38 Ill.App.3d 546, 555, 340 N.E.2d 210 (1<sup>st</sup> Dist. 1976).... 10

*Szymanski v. The Glen of South Burrington Property Owners Association* 293 Ill.App.3d 911, 914, 689 N.E.2d 272 (1<sup>st</sup> Dist. 1997)..... 11

*Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260, 262, 555 N.E.2d 1 (1990) ..... 11

**II. WHETHER THIS COURT SHOULD ENTER JUDGMENT NOW THAT THE SALE OF THE BONDS VIOLATED THE PROVISIONS OF 105 ILCS 5/17-2.11..... 12**

*Gonnella Baking Co. v. Clara’s Pasti di Casa, Ltd.*, 337 Ill.App.3d 385, 388, 786 N.E.2d 1058, reh. denied (1<sup>st</sup> Dist. 2003) ..... 12

*Longfellow by Longfellow v. Corey*, 286 Ill.App.3d 366, 367, 675 N.E.2d 1386 appeal denied, 173 Ill.2d 526, 684 N.E.2d 1336 (4<sup>th</sup> Dist. 1997) ..... 12

## **STATEMENT OF THE CASE**

Defendant, Community Unit School District #100, hereafter sometimes, “the district,” at p. 27 of its brief, states that its motion to dismiss pursuant to 735 ILCS 5/2-619 does not address the merits of the case and, therefore, it will not refute Plaintiffs’, hereinafter sometimes, “the taxpayers,” erroneous claim that the district did not comply with 105 ILCS 5/17-2.11 when it issued fire prevention and safety bonds. It is regrettable that the district is unwilling at this time to tell the Court why the taxpayers’ position is erroneous. If it is, then it necessarily follows that the argument on the affirmative defense of laches is moot and irrelevant. The taxpayers contend that the bonds were not authorized under 105 ILCS 5/17-2.11 and, merely because the district succeeded in issuing them before suit was filed, does not validate an otherwise illegal act and laches does not bar this suit.

### **735 ILCS 5/2-619**

In opposition to the motion, the taxpayers filed 2 affidavits.<sup>1</sup> One of the affidavits by Jeffrey D. Ferguson presented a letter he sent on August 28, 2003 seeking a meeting to

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<sup>1</sup>Except as otherwise stated, all references are to the Complaint for Injunctive Relief and to the Exhibits attached to the Complaint, namely, Exhibits 1-22. (A47-A116)

Defendant School District’s motion to dismiss submitted without affidavit, Exhibits A-Q in support of the motion which are found in its appendix. Because Defendant introduced facts and documents outside of the Complaint, Plaintiffs filed 2 affidavits to respond to the motion, i.e., Affidavits of Jeffrey D. Ferguson and Rodney Stumpf. (A28-37) See 735 ILCS 5/2-619(a)(9) which calls for affidavits to introduce facts beyond the allegations of the Complaint.

discuss the building replacement project currently underway. (A30) His request was summarily denied on November 14, 2003 by James Whiteside, the superintendent of the district, who stated that, “The Board of Education has directed me to inform you that it is not interested in meeting with you in regard to your proposed topic pursuant to your correspondence of August 28, 2003.” (A31) The second affidavit by Rodney Stumpf submitted the building permits for the Grafton Elementary School and the Jerseyville High School, dated December 2, 2003, and July 12, 2004, respectively (A32-37). Applications for Building Permits, showing “Total Square Footage” for the high school of 207,890 at a cost of \$24,269,520 (A36) and 45,520 square feet for the grade school at a cost of \$5,500,000.00, were attached to the permits. (A37)

## **II. STATEMENT OF FACTS**

### **A. Complaint For Permanent Injunction**

This is an action by taxpayers and citizens of Jersey County and Greene Counties for injunctive relief to prohibit the County Clerks and the Community Unit School District #100 from assessing property taxes which have been or will be paid by the taxpayers of the school district for at least the next 19 years for health and safety bonds issued for the construction of a new high school and elementary school. (§s 1-4, Complaint) (A47-50)

Under the provisions of 105 ILCS 5/17-2.11, the Illinois School Code provides in part:

For purposes of this Section a school district **may replace** a school building or build additions to replace portions of a building **when it is determined that the effectuation of the recommendations for the**

**existing building will cost more than the replacement costs.** Such determination shall be based on a comparison of estimated costs made by an architect or engineer licensed in the State of Illinois. **The new building or addition shall be equivalent in area (square feet) and comparable in purpose** and grades served and may be on the same site or another site. Such replacement may only be done upon the **order** of the regional superintendent of schools and the approval of the State Superintendent of Education.

(Emphasis ours; ¶s 21, 22, Complaint)

The statute further provides that “. . . the school board is authorized to sell bonds without referendum under the provisions of this Section . . . .”

**B. Health and Life Safety Surveys and The District’s Decision to Issue Fire Prevention and Safety Bonds.**

Calvin E. Morris and the Community Unit School District #100 filed Applications for the Approval of Ten-Year Safety Survey Reports (¶28, Complaint; Ex. 3) and Certifications of Need For Fire Prevention and Safety Funds as provided in Section 17-2.11 of the School Code representing that the district needed to raise \$580,515 in additional revenue through the levy of tax or the issuance of bonds to finance the recommended work for the high school, (¶27, Complaint; Ex. 4); and \$213,556 for Grafton Elementary School. On or about December 1, 2001, the Regional Superintendent approved a revised survey in the amount of \$531,167 for the high school (¶29, Complaint) and \$204,303 for Grafton Elementary School (¶30, Complaint) to bring the school buildings into compliance with the safety standards set forth in 23 Ill. Adm.

Code Part 175, 23 Ill. Adm. Code Part 180 and/or 20 Ill. Adm. Code Part 105 as promulgated by the State Board of Education. (§§ 31, 32, 33, Complaint; Ex. 4, 5, 6 & 7)

**C. The Cost to Replace the Schools Was More Than the Approved Cost to Repair the Schools and the New School Buildings Were Not Equivalent in Area.**

On May 13, 2002, new replacement cost estimates were submitted by David Pool of Design Architects, Inc. for the high school at \$12,684,893 and for the elementary school at \$3,071,609.10 (§§ 46, 47, Complaint; Exs. 19 & 20). (A81-82) The district, at page 13 of its brief, confirms that the replacement cost estimate for the high school was \$12,684,893 but contends that the repair and replacement costs for the grade school was \$2,470,413.00. As stated herein, the approved repair costs were less than the replacement costs for the school buildings. On October 16, 2002, David D. Pool, sent surveys for repair to the Regional Office of the Illinois State Board of Education with Certificates of Need seeking approval of Fire Prevention and Safety Funds in the amount of \$13,988,124.00 for the Jerseyville High School and \$3,445,872.00 for the Grafton Elementary School. (§§ 39, 40, 41, Complaint; Exs. 14 & 15) (A97-98) On November 27, 2002, the Regional Superintendent for the Illinois Office of Education issued a Combined Order of Compliance **for the high school and the elementary school** approving Amendment Number 1 in the amount of \$14,151.018 (§§ 42, 43, Complaint; Ex. 16). (A75) On February 23, 2003, Certificates of Approval were issued for the high school for \$11,354,034 and for the elementary school for \$2,796,984 (§§ 44, 45 Complaint; Exs. 17 & 18). (A102, 104)

**AAIC, Inc. - Calvin E. Morris**

<b>Grafton Elementary</b>	<u>Cost to Repair</u>	<u>Replacement</u>
	\$204,303.00 (Ex. 5 to Complaint)	(none submitted)

**Jersey Community High School**

	\$531,167.00 (Ex. 4 to Complaint)	(none submitted)
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**Design Architects, Inc. – David D. Pool**

<b>Grafton Elementary</b>	<u>Cost to Repair</u>	<u>Replacement</u>
	\$2,796,984.00* (Ex. 17, ¶ 2 to Complaint)	\$3,071,609.10.00 (Ex. 20 to Complaint)

**Jersey Community High School**

	\$11,354,034.00* (Ex. 18 to Complaint)	\$12,684,893.00 (Ex. 19 to Complaint)
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\* State approved estimates totaling \$14,151,018 or \$11,354,034 for the high school (A104) and \$2,796,948 for the grade school. (A102)

According to the Replacement Cost Estimate prepared by Design Architects, Inc., the existing high school had 146,173 square feet and could be replaced at a cost of \$12,684,898.00 (Ex. 19) (A105) while the Grafton Elementary School had 29,430 square feet with an estimated replacement cost of \$3,071,609.10 (Ex. 20) (A106) As finally submitted by the architect, the Jersey Community High School has 207,890 square feet with an estimated cost of \$24,269,520.00, (A36) and the Grafton Elementary School has 45,520 square feet at a cost of \$5,500,000.00 (A37). (Affidavit of Rodney Stumpf, Applications for Building Permits, dated December 2, 2003 for the grade school and July 12, 2004, for the high school attached hereto.) (A32-37) In its brief, the district, does not

address the size of the new school buildings nor does it attempt to demonstrate that they are “equivalent” in area (square feet).

**D. The Public Hearing For Approval of Bond Issuance Supports the Taxpayers’ Claim That They Were Never Notified of the Purpose of the Bond Issue.**

The public notice for the hearing on the proposed sale of the bonds did not tell the residents **where** the meeting would take place and misrepresented the use of the bond proceeds. (RC 146) The published notice on January 15, 2003 stated that the district proposed to sell bonds in the amount of \$16,000,000.00 “... for the purpose of confirming its existing facility that house students to the building code ... by altering, reconstructing and repairing such facilities....” (RC 146) The district acknowledges that the bond resolutions were approved on February 12, 2003 for the Series 2003 bonds and on August 18, 2004 for the Series 2004 bonds. The district also states, at p. 14 of its brief, that after the bonds were issued, School Building Permits were issued for the Grafton Elementary School and the Jerseyville High School on December 2, 2003 and on July 12, 2004, respectively.

**E. Plaintiffs Actual and Imputed Knowledge of the Bond Issue Does Not Bar This Action**

Having voted on April 13, 1999 against the issuance of bonds to construct a new high school, the taxpayers of Jersey and Greene Counties did not realize that the school district intended to proceed without voter approval to issue bonds and build the school buildings. In any case, the necessary factual information concerning the proposed new school buildings was not readily available. The concerns and threats of litigation of the taxpayers do not equate to knowledge of a violation of law. But, to the extent the taxpayers are charged with knowledge, the district, likewise, must accept that it was

aware of the serious concerns by many citizens that the replacement of the schools was possibly in conflict with the applicable statutes.

## ARGUMENT

### **I. WHETHER THE TRIAL COURT ERRED IN DISMISSING THE TAXPAYERS' COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

As demonstrated in the taxpayers' principal brief and this reply, the school district issued \$16,000,000.00 in bonds in apparent violation of the provisions of 105 ILCS 5/17-2.11. The cost to repair the buildings, even under the jury-rigged figures provided by the new architect, was less than replacement cost, and the new buildings were not equivalent in size. ("The new building or addition shall be equivalent in area (square feet) and comparable in purpose and grades served and may be on the same site or another site." - 105 ILCS 5/17-2.11.)

How does the district purport to deal with these facts? The Court is advised that it must wait for the district's explanation why the issuance of the bonds did not violate the statute.

The burden of pleading and proving that there has been an unreasonable delay in filing suit that has materially prejudiced a party falls on the party invoking the laches doctrine. *Nancy's Home of Stuffed Pizza, Inc. v. Cirrencrone*, 144 Ill. App. 3d 934, 941, 494 N.E.2d 795 (1986). Laches is an equitable principle which bars recovery by a litigant whose unreasonable delay in bringing suit prejudices the rights of the other party. *People ex rel Daley v. Strayhorn*, 121 Ill.2d 470, 482, 521 N.E.2d 864 (1988). Whether laches will apply depends on the facts and circumstances of a particular case. *Eckberg v.*

*Benso*, 182 Ill. App. 3d 126, 132, 537 N.E.2d 967 (1989). Appellants are mindful of the rule that a trial judge's ruling will not be disturbed on review unless the determination is so clearly wrong as to constitute an abuse of discretion. *Gill v. Gill*, 8 Ill. App. 3d 625, 627, 290 N.E.2d 897 (1972). Appellants respectfully submit that this Court can and should declare the law and address the laches defense de novo in that the trial court's decision was based solely on the record documents upon which both parties rely.

*Broadnax v. Morrow*, 326 Ill.App.3d 1074, 1077, 762 N.E.2d 1154 (4<sup>th</sup> Dist. 2002)

Having demonstrated the violations of the statute and the illegal issuance of the bonds, did the taxpayers wait too long to file suit?

To begin with, the defense of laches is generally not applied to the State in the same manner that it is applied to other entities and the doctrine is sparingly applied to public bodies. *Orland Park v. First Federal Savings and Loan Association*, 135 Ill. App. 3d 520, 527, 481 N.E.2d 946 (1985). In addition, equity follows the law and the district does not contend that any statute of limitations bars this action. The district does contend that the taxpayers knew, as of January 28, 2003, at the time of the special meeting that the proposed bond issue was in violation of 105 ILCS 5/17-2.11. The meeting was not properly advertised and misrepresented the intentions of the school district in stating that the bonds would be used to repair the buildings not replace them. (Cf. RC 141 and 146) In addition, the bond notifications are dated February 20, 2003 and August 18, 2003, respectively. (RC 152 and 157) Moreover, the bonds were sold privately on February 12, 2003 and August 18, 2004 to Harris Trust and Savings Bank immediately after the special meeting on January 28, 2003 (Resp. A46, A51). How were the taxpayers to know that the statute was not being followed without the construction contracts and other cost

information held by the district? When Mr. Ferguson asked for a meeting on August 28, 2003, he was told on November 14, 2003 that the school district would not address the concerns of the taxpayers. (A31) Arguably, the filing of the building permits on December 2, 2003 and July 12, 2004 disclosed the potential violation of the statute but, even then, the taxpayers did not have discreet factual information to challenge the school district which was being advised by Harris Trust and Savings Bank which ultimately bought the bonds in a private sale on February 12, 2003 and on August 18, 2004.

Judge Bell accepted the school district's argument that nothing could be done to challenge the illegal bond issues where the school buildings were completed. But, if the bonds are void, as the taxpayers contend, they are unenforceable against the district. It is true that the bond purchaser will suffer a loss, but the purchasers have recourse under an insurance policy that insured the bonds and/or the bank and/or its attorneys who gave legal opinions that the bond sales complied with the applicable statutes. The taxpayers understand the reluctance of the trial judge to declare the bonds void ab initio, but this relief is appropriate where the statutory provisions for issuance of bonds are ignored. Judge Bell's statement concerning the completion of the buildings ("There is no way to unring the bell") is accurate, but the trial judge nevertheless had a duty to declare the law and address the issue presented by the taxpayers. If this Court affirms the dismissal of this action on the basis of laches, this will only encourage public bodies to ignore the statutes and the will of the voters on important public policy and tax issues.

The cases relied upon by the district are each based on their particular facts. In *Blankenship v. County of Kane*, 85 Ill. App. 3d 621, 623, 407 N.E.2d 145 (2<sup>nd</sup> Dist. 1980), a special use ordinance granting a special use for a restricted landing area to be

developed in Kane County was not challenged for 10 years. While affirming the dismissal on the basis of laches, the court specifically held that “. . . all elements of the defense of laches do appear on the face of the pleadings.” 85 Ill.App. 3d 621, 623, 407 N.E.2d 145. In the instant case, the district submitted 171 pages of pleadings and documents in support of its laches argument but refuses to address the legality of the bond issue. In *Bays v. Mathews*, 108 Ill. App. 3d 1112, 1118, 440 N.E.2d 142 (5<sup>th</sup> District 1982), the court affirmed a dismissal of a quiet title action, but only after a trial and a full development of the record. In affirming the judgment, the court quoted with approval, *Pyle v. Ferrell*, 12 Ill.2d 547, 553, 147 N.E.2d 341 (1958), which recognized that “more than ordinary promptness is required of a claimant if the property involved is of a speculative or fluctuating character. . . .”

In *Zegers v. Zegers, Inc.*, 38 Ill. App. 3d 546, 555, 340 N.E.2d 210 (1<sup>st</sup> Dist. 1976), the court again affirmed a judgment based upon a laches defense relating to preemptive rights, but only after the circuit court heard evidence on all three counts of the complaint. According to the record, the Plaintiff waited 23 years before asserting his rights to 20/55th ownership of Zegers, Inc. As the court stated,

“Laches is applied by equity courts to protect a party against stale claims where he has changed his position without knowledge of a possible claim and where to permit the belated assertion of the claim would be inequitable.” 38 Ill. App. 3d 546, 556, 348 N.E.2d 210.

In the instant case the school district was aware that the taxpayers soundly rejected the issuance of general obligation bonds to build a new high school. Instead of strictly complying with the applicable statutes, the district ignored questions raised by the

taxpayers and proceeded to issue bonds. The district was aware that there might be a challenge to its actions, but proceeded ahead without disclosing the facts to the citizens.

In *Szymanski v. The Glen of South Burrington Property Owners Association*, 293 Ill. App. 3d 911, 914, 689 N.E.2d 272 (1<sup>st</sup> Dist. 1997), the plaintiff watched a home being built in his subdivision and wrote a letter on August 4, 1992 protesting its construction under certain restrictive covenants. In applying the laches defense to an action filed 4 years later, the court pointed to a response to plaintiff's letter indicating that defendants believed they were in compliance. In the instant case, the school district advised the taxpayers that it was not interested in meeting to discuss the concerns of the taxpayers. While each of the cases cited by the district discuss laches, they are not analogous to the present action.

The taxpayers suggest that the opinion of the Supreme Court in *Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill. 2d 260, 262, 555 N.E.2d 1 (1990) which dealt with the provisions of 105 ILCS 5/17-2.11 is instructive. In this suit, the taxpayers brought a challenge to the issuance of school bonds to pay for safety improvements challenging the applicable interest rate. The bonds were issued on November 1, 1984. Suit was filed on June 3, 1986. While this suit was pending, the statute was amended. Of interest to this suit is the fact that the defense of laches was not raised, and the Supreme Court made appropriate rulings of law that resolved the action.

For the foregoing reasons, the taxpayers respectfully submit that the decision of the trial court should be reversed and remanded.

**II. WHETHER THIS COURT SHOULD ENTER JUDGMENT NOW THAT THE SALE OF THE BONDS VIOLATED THE PROVISIONS OF 105 ILCS 5/17-2.11**

Because the underlying action was dismissed pursuant to 735 ILCS 5/2-619(a)(9), on an agreed record, this Court can and should declare the law and determine if the bonds were or were not issued in compliance with the applicable provisions of 105 ILCS 5/17-2.11. While there are facts in dispute regarding the knowledge imputed to the taxpayers both parties rely upon the building permits for the new schools, dated December 2, 2003 and July 12, 2004. (A34-35) By comparing, the square footage of the buildings in the applications for the permits filed and certified by the district and its architect (A36-37) with the letters, dated May 13, 2003 sent by the district architect to the school superintendent, it is plain that the new buildings are not “equivalent” in area (square feet). The taxpayers submit that this Court can and should make this determination now and, on this basis, reverse the trial court’s decision and remand the case with instructions to enter judgment in favor of the taxpayers. *Gonnella Baking Co. v. Clara’s Pasti di Casa, Ltd.*, 337 Ill.App.3d 385, 388, 786 N.E.2d 1058, reh. denied (1<sup>st</sup> Dist. 2003); *Longfellow by Longfellow v. Corey*, 286 Ill.App.3d 366, 367, 675 N.E.2d 1386, appeal denied, 173 Ill.2d 526, 684 N.E.2d 1336 (4<sup>th</sup> Dist. 1997)

**CONCLUSION**

Appellants appreciate the reluctance of the school district to address the merits of this case. Without an order requiring replacement of the school buildings, with unusual repair estimates, the district undertook to issue \$16,000,000.00 in fire prevention and safety bonds not for immediate repairs to the school buildings but to replace them with substantially larger buildings. All this, the taxpayers are told, should be ignored because

they did not act quickly enough to stop the district from violating the applicable statute. The taxpayers respectfully ask this Court to redress this wrong, to enter an appropriate judgment on the merits and to remand the case with instructions to enter judgment and permanent injunctive relief prohibiting the imposition of an illegal tax.

Respectfully submitted,  
ANDERSON & GILBERT

Date: February 27, 2007

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**Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix, is 14 pages.

Dated: February 27, 2007

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